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DEBATES

IN THE

MASSACHUSETTS CONSTITUTIONAL CONVENTION

1917-1918

CHAPTERS I TO XV

BOSTON
WRIGHT & POTTER PRINTING CO., STATE PRINTERS
32 DERNE STREET
1919

PREFACE.

The Convention directed its Committee on Rules and Procedure to publish a report of the Debates. At the request of the Committee its ranking member undertook the oversight of preparation and publication. He was of the belief that the convenience of legislators, lawyers, historians, students, and others who might have occasion to consult the report would be subserved by departing from the customary method of arrangement, which has been purely chronological, strictly consecutive. Under that method it is often hard to find all that has been said on any given topic; and there must be much waste of time in the use of the index, with some degree of uncertainty as to the result of search. Therefore it was determined to make the arrangement topical, with the attempt to group allied topics and to secure a sequence in general conformity with the order followed in the Constitution itself. If this occasionally brings comment or allusion in advance of the subject thereof, it is hoped that any inconvenience will be more than offset by the advantages of systematic arrangement.

The directions given by the Convention permitted the omission of so much of the debate as related to matters of procedure, and only that has been retained which is necessary to an understanding of the main argument, or throws desirable light on the circumstances of the discussion. In case any reader should have occasion to determine whether relevant matter of consequence does not here appear, he may consult the verbatim transcript of the stenographic notes, which has been filed in the State Library.

After the first session (June–November, 1917) it seemed desirable to publish at once the debate on the Initiative and Referendum. This was of suitable length for a volume by itself; and with the hope that it might prove to be in logical order as Volume II., Chapter XVI., was so printed. The course of debate in the following session (June–August, 1918) has made it possible to devote Volume I. in the main to topics concerning the Bill of Rights, with the probability that the

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final volume (or volumes) will chiefly comprise discussion of topics relating to the Frame of Government.

A condensed record of the treatment of each topic is prefixed to the report of its debate. For the lists of Yea and Nay votes and the full record of collateral procedure, the Journal may be consulted.

It is fitting that credit should be here given to those who have shared in the preparation of these volumes. The stenography was the work of Frank H. Burt, Arthur T. Lovell, and William L. Haskel, expert in their art, accurate and prompt in performance. The editing has been done by William H. Sanger, Assistant Clerk of the Senate, journalist by training, diligent and skilful in carrying through an exceptionally intricate and arduous task. The indexing (except of the second volume) was intrusted to David M. Matteson, specialist in applying scientific methods to such effort. The printing presented unusual problems, by reason of the topical arrangement, which required keeping a great deal of matter in type, pending completion of the debate on the various topics, and it was fortunate that there were at command such facilities as those of the State printers, the Wright & Potter Printing Co., who heartily coöperated in accomplishing the ends desired.

ROBERT LUCE,

For the Committee on Rules and Procedure.

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PROVISION FOR THE CONVENTION.

The General Court of 1916 made provision for the Constitutional Convention in Chapter 98 of the General Acts of that year. The Act was as follows: —

AN ACT TO ASCERTAIN AND CARRY OUT THE WILL OF THE PEOPLE RELATIVE TO THE CALLING AND HOLDING OF A CONSTITUTIONAL CONVENTION.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. For the purpose of ascertaining the will of the people of the Commonwealth with reference to the calling and holding of a Constitutional Convention, the Secretary of the Commonwealth shall cause to be placed on the official ballot to be used at the next annual State election the following question: — "Shall there be a Convention to revise, alter or amend the Constitution of the Commonwealth?" The votes upon said question shall be received, sorted, counted, declared and transmitted to the Secretary of the Commonwealth, laid before the Governor and Council, and by them opened and examined, in accordance with the laws relating to votes for State officers so far as they are applicable. The Governor shall, by public proclamation, on or before the first Wednesday in January next, make known the result by declaring the number of votes in the affirmative and the number in the negative; and if it shall appear that a majority of said votes is in the affirmative, it shall be deemed and taken to be the will of the people that a Convention be called and held to revise, alter or amend the Constitution, and in his proclamation the Governor shall call upon the people to elect delegates to the Convention, at a special election to be held in all the cities and towns of the Commonwealth on the first Tuesday in May in the year nineteen hundred and seventeen.

SECTION 2. The number of delegates to be elected to the Convention shall be three hundred and twenty, of whom sixteen shall be elected at large, sixty-four by the sixteen congressional districts, to wit, four by each district, and two hundred and forty by the legislative representative districts of the Commonwealth, each district having the same number of delegates as it is then entitled to elect representatives to the General Court.

SECTION 3. Nomination of candidates for the office of delegate to the Constitutional Convention shall be made by nomination papers without party or political designation which shall be signed in the aggregate by not less than twelve hundred voters for each candidate at large, by not less than five hundred voters for each candidate for delegate from a congressional district, and by not less than one hundred voters for each candidate for delegate from a legislative representative district. Said papers shall be filed on or before five o'clock in the afternoon on the first Tuesday in March in the year nineteen hundred and seventeen. No person shall be a candidate for delegate in more than one district, or both in a district and at large. If nomination papers for more than one nomination for delegate are filed in behalf of a candidate, and if, within seventy-two hours after five o'clock in the afternoon of the first Tuesday in March aforesaid, he withdraws all but one nomination, the remaining

nomination shall be valid. No person shall be a candidate for delegate from a legislative representative district in which he does not reside.

Section 4. If in the Commonwealth at large, or in any district, the number of persons nominated by nomination papers equals or exceeds three times the number to be elected delegates as provided by section two, a non-partisan primary shall be held in the Commonwealth, or in such district, on the first Tuesday of April in the year nineteen hundred and seventeen. At such primary, twice the number of persons to be elected delegates shall be chosen from those nominated by nomination papers, and those so chosen shall be deemed nominated as candidates for delegate, and their names only shall appear on the ballot at said special election. The provisions of section five of this act shall, so far as is consistent herewith, apply to the primaries provided for by this section.

Section 5. At the special election to be held under the provisions of section one, every person then entitled to vote for State officers shall have the right to vote for sixteen delegates at large, for four delegates from his congressional district, and for the number of delegates from his representative district to which that district is entitled under the provisions of section two. The number of delegates of each class for which the voter has the right to vote shall appear on the official ballot. No party or political designation shall appear on said ballot.

Section 6. The persons elected delegates shall meet in Convention in the State House, in Boston, on the first Wednesday in June in the year nineteen hundred and seventeen. They shall be the judges of the returns and election of their own members, and may adjourn from time to time; and one hundred and sixty-one of the persons elected shall constitute a quorum for the transaction of business. They shall be called to order by the Governor, and shall proceed to organize themselves in Convention, by choosing a President and such other officers and such committees as they may deem expedient, and by establishing rules of procedure; and when organized, they may take into consideration the propriety and expediency of revising the present Constitution of the Commonwealth, or making alterations or amendments thereof. Any such revision, alterations or amendments, when made and adopted by the said Convention, shall be submitted to the people for their ratification and adoption, in such manner as the Convention shall direct; and if ratified and adopted by the people in the manner directed by the Convention, the Constitution shall be deemed and taken to be revised, altered or amended accordingly; and if not so ratified and adopted the present Constitution shall be and remain the Constitution of the Commonwealth.

Section 7. The Convention shall be provided by the Sergeant-at-Arms, at the expense of the Commonwealth, with suitable quarters and facilities for exercising its functions. It shall establish the compensation of its officers and members, which shall not exceed seven hundred and fifty dollars for each member of the Convention as such. It shall, subject to the approval of the Governor and Council, provide for such other expenses of its session as it shall deem expedient, and may cause to be prepared and issued a statement briefly setting forth such arguments as the Convention may see fit relative to any revision, alteration or amendment of the Constitution adopted by it, or any part thereof. The members of the Convention shall receive the mileage specified in section eight of chapter three of the Revised Laws, as amended by chapter six hundred and seventy-six of the Acts of the year nineteen hundred and eleven. The Governor, with the advice and consent of the Council, is authorized to draw his warrant on the treasury for any of the foregoing expenses.

Section 8. The Secretary of the Commonwealth is hereby directed to transmit forthwith printed copies of this act to the selectmen of each town and the mayor of each city within the Commonwealth; and whenever the Governor shall issue his

proclamation, calling upon the people to elect delegates, the Secretary shall also, immediately thereafter, transmit printed copies of said proclamation, attested by him, to the selectmen and mayors.

SECTION 9. All laws relating to nominations and nomination papers, and to primaries, elections and corrupt practices therein, shall, so far as is consistent herewith, apply to the nomination of candidates for delegate to the Convention, and to the primaries and special election provided for by this act.

Approved April 3, 1916.

The Act providing for the calling and holding of the Constitutional Convention was accepted by the people Tuesday, November 7, 1916, by a vote of 217,293 to 120,979.

MEMBERS OF THE CONVENTION.

The special election was held Tuesday, May 1, 1917, and the following delegates were elected: —

Adams, Brooks, of Quincy.
Adams, Charles Francis, of Concord.
Adams, Scott, of Springfield.
Adams, Smith J., of Lowell.
Anderson, Frederick L., of Newton.
Anderson, George W., of Brookline.
Avery, Nathan P., of Holyoke.
Aylward, James F., of Cambridge.

Bailey, Charles O., of Newbury.
Bailey,[1] J. Warren, of Somerville.
Balch, Francis N., of Boston.
Ballantyne, John, of Boston.
Bangs, Francis R., of Boston.
Barker, Warren S., of Fall River.
Barnes, Clarence A., of Mansfield.
Barnes, George L., of Weymouth.
Barrett, James T., of Cambridge.
Bartlett, Horace I., of Newburyport.
Bassett, Edmund, of Taunton.
Batchelder, Albert W., of Salem.
Bates, John L., of Brookline.
Bates, Sanford, of Boston.
Bauer, Ralph S., of Lynn.
Begley, John S., of Holyoke.
Bennett, Frank P., of Saugus.
Benton, Everett C., of Belmont.
Bergengren, Roy F., of Lynn.
Besse, Harold A., of Newburyport.
Bicknell, Wallace H., of Weymouth.
Bigney, Robert E., of Boston.
Bird, Charles S., Jr., of Walpole.
Blackmur, Paul R., of Quincy.
Bodfish, John D. W., of Barnstable.
Bolster, Percy G., of Boston.
Bosworth, Henry H., of Springfield.
Boucher, Joseph Zoël, of New Bedford.
Bouvé, Walter L., of Hingham.
Bowen, Patrick, of Boston.
Boyden, Frank L., of Deerfield.
Boyer, Elmer E., of Lynn.
Boynton, Thomas J., of Everett.
Brackett,[2] John Q. A., of Arlington.
Brennan, James H., of Boston.
Brennan, James J., of Boston.
Brine, Henry C., of Somerville.
Broderick, Patrick S., of Waltham.
Brooks, George F., of Worcester.
Brown, E. Gerry, of Brockton.
Brown, Samuel F., of Springfield.
Bruce, Charles, of Everett.
Bryant, Lincoln, of Milton.
Buck, Maurice A., of Billerica.
Bullock, William J., of New Bedford.
Burns, William A., of Pittsfield.
Burrell, Fred J., of Medford.
Butler, A. Webster, of Brockton.
Buttrick, Allan G., of Lancaster.

Callahan, Timothy F., of Boston.
Carr, Edward, of Hopkinton.
Chandler, Leonard B., of Somerville.
Charbonneau, Henry V., of Lowell.
Chase, Mial W., of Lynn.
Choate, Charles F., Jr., of Southborough.
Churchill, George B., of Amherst.
Clapp, Robert P., of Lexington.
Clark, Chester W., of Wilmington.
Clark, Ezra W., of Brockton.
Coakley, Daniel H., of Boston.
Codman, James M., Jr., of Brookline.
Coe, S. Hamilton, of Worcester.
Coleman, George W., of Boston.
Collier, David R., of Gardner.
Collins, Samuel I., of Amesbury.
Coogan, Clement F., of Pittsfield.
Cook, Benjamin A., of Fitchburg.
Cook, Rufus H., of Northampton.
Coolidge, Louis A., of Milton.
Coombs, Zelotes W., of Worcester.
Cooney, Charles P., of Peabody.
Corrigan, Robert S., of Natick.
Costello, Francis M., of Boston.
Coughlan, William J., of Boston.
Cox, Guy W., of Boston.
Crafts, Lyman A., of Whately.

[1] Died February 15, 1918.

[2] Died April 6, 1918.

Craven, John H., of Boston.
Creamer, Walter H., of Lynn.
Creed, James F., of Boston.
Crosby, J. Howell, of Arlington.
Crossley, William Cyril, of Fall River.
Cummings, Herbert E., of North Brookfield.
Cummings, John W., of Fall River.
Curtis, Arthur B., of Revere.
Curtis, Charles P., Jr., of Boston.
Curtis, Edwin U., of Boston.
Curtiss, Elmer L., of Hingham.
Cusick, John F., of Boston.

Dale, George H., of Watertown.
Daley, Peter, of Lowell.
Daly, John W., of Lowell.
Davis, Elbridge G., of Malden.
Davis, William R., of Cambridge.
Day, Charles M., of Winchendon.
Dean, Robert A., of Fall River.
Delaney, Louis F., of Holyoke.
Delano, Robert T., of Wareham.
Dellinger, Raymond P., of Wakefield.
Derbyshire, James H., of Lawrence.
Doe, Orestes T., of Franklin.
Donnelly, James P., of Lawrence.
Donoghue, John A., of Boston.
Donovan, Daniel R., of Springfield.
Donovan, James A., of Lawrence.
Donovan, Thomas F., of Boston.
Doran, James P., of New Bedford.
Douglass, John J., of Boston.
Dresser, Frank F., of Worcester.
Driscoll, Dennis D., of Boston.
Driscoll, Timothy J., of Boston.
Dutch, Charles Frederick, of Winchester.

Ellis, Theodore W., of Springfield.

Farnsworth, Frank S., of Leominster.
Feiker, William H., of Northampton.
Ferrey, Irving D., of Pittsfield.
Ferry, James R., of Northbridge.
Finn, E. Philip, of Chelsea.
Fisher, Edward, of Westford.
Fitz-Randolph, Reginald T., of Nantucket.
Flaherty, William, of Boston.
Flye, Louis Edwin, of Holbrook.
Flynn, Maurice R., of Malden.
Foss, George H., of Springfield.
Fraser, Eugene B., of Lynn.
French, Asa P., of Randolph.
Frost, Archie N., of Lawrence.

Gallagher, Daniel J., of Boston.
Garland, Francis P., of Somerville.
Gartland, John J., of Boston.
Gates, Joseph S., of Westborough.
Gaylord, Henry E., of South Hadley.
George, Samuel W., of Haverhill.
Giddings, Charles, of Great Barrington.
Glazier, Frederick P., of Hudson.
Gleason, Nesbit G., of Andover.
Good, John P., of Cambridge.
Granfield, William J., of Springfield.
Graumann, John, of Boston.
Green, Thomas H., of Boston.
Greenwood, Hamlet S., of Lowell.

Haines, Benjamin F., of Medford.
Hale, Edward R., of Haverhill.
Hale, Matthew, of Boston.
Hall, Elisha S., of Orange.
Hall, Frederick S., of Taunton.
Hall, Isaac Freeman, of North Adams.
Hamilton, Andrew Foster, of Athol.
Harding, Clarence W., of Whitman.
Harriman, Arthur N., of New Bedford.
Harrington, Patrick H., of Fall River.
Hart, Albert Bushnell, of Cambridge.
Hawley, Truman R., of Malden.
Hibbard, Charles E., of Pittsfield.
Hicks, George H., of Fall River.
Hobbs, Clarence W., Jr., of Worcester.
Hoitt, Augustus J., of Lynn.
Horgan, Francis J., of Boston.
Howard, Charles P., of Reading.
Hutchings, Henry M., of Dedham.

Johnson, Charles R., of Worcester.
Jones, George R., of Melrose.

Keliher, John A., of Boston.
Kelley, George W., of Rockland.
Kelley, Thomas R., of Boston.
Kelly, Luke L., of Boston.
Kenefick, Thomas W., of Palmer.
Kenny, Herbert A., of Boston.
Kerr, Alexander, of Malden.
Kilbon, John L., of Springfield.
Kinney, William S., of Boston.
Kneil, Arthur S., of Westfield.
Knotts, J. Franklin, of Somerville.

Lane, Daniel W., of Boston.
Lane, Dwight F., of Dighton.
Langelier, Louis F. R., of Quincy.
Larson, Charles G., of Worcester.
Leboeuf, Telesphore, of Webster.
Leonard, Joseph J., of Boston.
Linke, Fred R., of West Springfield.
Logan, James, of Worcester.
Lomasney, Martin M., of Boston.
Look, William J., of Tisbury.
Loring, Augustus P., of Beverly.
Love, Joseph A., of Webster.
Lowe, Arthur H., of Fitchburg.
Lowell, James A., of Newton.
Luce, Robert, of Waltham.
Lufkin, Willfred W., of Essex.
Lummus, Henry T., of Lynn.
Lyman, Frank E., of Easthampton.
Lynch, John C., of Milford.

MacMaster, Edward A., of Bridgewater.
Maguire, James E., of Boston.
Mahoney, John J., of Boston.
Malone,[1] Dana, of Greenfield.
Mancovitz, David, of Boston.
Mansfield, John J., of Boston.
Marshall, Daniel J., of Worcester.
Martin, Daniel A., of Holyoke.
Martin, Martin L., of Boston.
McAnarney, John W., of Quincy.
McCaffrey, George H., Jr., of Boston.
McCarthy, Charles F., of Marlborough.
McCormack, John W., of Boston.
McIsaac, Daniel V., of Boston.
McKeon, Francis P., of Worcester.
McLaud, Abner S., of Greenfield.
Merriam, John M., of Framingham.
Merrill, George Frye, of Gloucester.
Michelman, Joseph, of Boston.
Mitchell, Charles, of New Bedford.
Mitchell, John, of Springfield.
Montague, David T., of Boston.
Moore, Charles D. C., of Swampscott.
Moran, William, of Fall River.
Moriarty, James T., of Boston.
Morrill, Charles H., of Haverhill.
Morton, James M., of Fall River.
Moynihan, James J., of Boston.
Murley, Joseph J., of Boston.
Murphy, John L., of Chelsea.
Myron, John F., of Boston.

Nestor, Patrick F., of Lowell.
Newhall, Arthur N., of Stoneham.
Newton, H. Huestis, of Everett.
Nutting, Edward H., of Leominster.

O'Connell, John J., of Lowell.
O'Connell, John P., of Salem.
O'Connell, Joseph F., of Boston.
O'Connor, John D., of Chicopee.

Parker, George S., of Boston.
Parker, Herbert, of Lancaster.
Parkman, Henry, of Boston.
Peirce, Albion G., of Methuen.
Pelletier, Joseph C., of Boston.
Perry, Augustus W., of Boston.
Peterson, Patrick, of Brockton.
Pillsbury, Albert E., of Wellesley.
Powers, Samuel L., of Newton.
Putnam, Harry B., of Westfield.

Quincy, Josiah, of Boston.
Quinn, Timothy F., of Sharon.

Ray, Herbert L., of Sutton.
Reidy, Michael J., of Boston.
Richardson, Edward A., of Ayer.
Richardson, James P., of Newton.
Rieutord, Louis O., of Southbridge.
Robbins, Edward J., of Chelmsford.
Robinson, George H., of Sturbridge.
Ross, Samuel, of New Bedford.
Russell,[2] Walter F., of Brockton.
Saunders, Amos T., of Clinton.
Sawyer, Roland D., of Ware.
Scigliano, Alfred P., of Boston.
Shanahan, William J., of Somerville.
Shattuck, Josiah B., of Worcester.
Shaw, Michael F., of Revere.
Shea, John M., of Dalton.
Shea, John T., of Cambridge.
Sheehan, Christopher A., of Boston.
Sherburne, Nelson, of West Springfield.
Skerrett, Mark N., of Worcester.
Smith, Jerome S., of Provincetown.
Smith, Rutherford E., of Lynnfield.
Sparrell, Ernest H., of Norwell.
Stearns, Harry N., of Cambridge.
Stoeber, Charles, of Adams.
Stoneman, David, of Boston.
Sullivan, Edmund G., of Salem.
Sullivan,[3] Joseph M., of Boston.

[1] Died August 13, 1917. [2] Died June 22, 1917. [3] Declared seated by the Convention.

Sullivan, Michael A., of Lawrence.
Sullivan, William H., of Boston.
Sullivan, William J., of Boston.
Sweeney, Edward A., of Attleboro.
Sweet, Joseph L., of Attleboro.
Swig, Louis, of Taunton.

Talbot, Harry R., of Plymouth.
Tatman, Charles T., of Worcester.
Theller, Ralph L., of New Bedford.
Thompson, Edward, of Beverly.
Thompson, Hubert C., of Haverhill.
Thompson, John L., of North Attleborough.
Tilton, Rufus H., of Springfield.
Trefry, William D. T., of Marblehead.
Turner, Joseph, of Fall River.
Twomey, John C., of Lawrence.

Underhill, Charles L., of Somerville.

Walcott, Robert, of Cambridge.
Walker, George, of New Bedford.
Walker, Joseph, of Brookline.
Walsh, David I., of Fitchburg.
Washburn, Albert H., of Middleborough.
Washburn, Charles G., of Worcester.
Waterman, George B., of Williamstown.
Webster, Francis E., of Waltham.
Webster, George P., of Haverhill.
Weekes, George LeRoy, of Harwich.
Wellman, Arthur Holbrook, of Topsfield.
Wheeler, William, of Concord.
Wheelock, Henry H., of Fitchburg.
Whipple, Sherman L., of Brookline.
White, John A., of North Brookfield.
Whitehead, James, of Fall River.
Whittier, Eugene P., of Winthrop.
Willett, George Franklin, of Norwood.
Williams, Fred Homer, of Brookline.
Wilson, William H., of Lowell.
Wing, Herbert, of Dartmouth.
Winslow, Guy M., of Newton.
Wonson, Carlton W., of Gloucester.
Wood, Charles J., of Cambridge.

Youngman, William S., of Boston.

PRELIMINARY PROCEEDINGS

PRELIMINARY PROCEEDINGS.

OPENING CEREMONIES AND ORGANIZATION.

The Convention assembled at the State House, in the chamber of the House of Representatives, at 11 A.M., June 6. His Excellency, Samuel W. McCall, Governor, after calling the Convention to order, asked Rt. Rev. William Lawrence, D.D., Protestant Episcopal Bishop of Massachusetts, to offer prayer.

Prayer by Bishop Lawrence.

O Almighty God, in whom dwelleth righteousness and truth, who art the only source of Light and Life, pour down upon us, who are met in solemn assembly to consider the foundations of the government of this Commonwealth, the rich gifts of Thy good spirit.

We praise Thee for the work of our fathers who gave to us a Constitution under which the Commonwealth has increased in strength and virtue. We treasure with gratitude the names of those who in times of peace and of war have given their lives for the State. We name the institutions of justice, learning, mercy, and piety that have arisen under the protection of the law and in the atmosphere of civil and religious liberty. We rejoice in the increasing recognition of the rights and privileges of all citizens and of the responsibility of all to uphold the government and to defend the Nation.

As we enter upon our work, may we be conscious of the solemn responsibility laid upon us by the people. Save us from all error, ignorance, pride, and prejudice. And of Thy great mercy direct and prosper all our consultations and actions to the advancement of Thy glory and the safety, honor, and welfare of the people, so that peace and happiness, truth and justice, religion and piety, may be established among us all for generations.

We pray also for the President of the United States, the Governor of this State and all others in authority. Grant to them at this time special gifts of wisdom and understanding, of counsel and strength, that, upholding what is right, and following what is true, they may obey Thy Holy Will. Give skill and strength to our Army and Navy.

Bless our land with honorable industry, sound learning and pure manners. Defend our liberties, preserve our unity; save us from lawlessness and violence, from pride and arrogance. Fashion into one happy people the multitudes brought hither out of many kindreds and tongues. In time of prosperity fill our hearts with thankfulness, and in the day of trouble suffer not our trust in Thee to fail. Hasten the day when all nations shall dwell together in peace.

We now commend ourselves, O Heavenly Father, to Thee, to the establishment of justice and to the service of the people. Send out Thy light. Let Thy truth lead us. Amen.

Address of Governor Samuel W. McCall.

Gentlemen of the Convention: It has been nearly two generations since the people of the Commonwealth have entrusted to any body of men the task they have just confided to you. Since the Convention which framed our Constitution nearly one hundred and fifty years ago, there have been before to-day but two Constitutional Conventions. The rarity of the occasions upon which the people have exercised their power to summon together a body of men to consider changes in their organic law, serves to mark the distinction of the work. But the character of those whom they have chosen, no less indicates the view they take of its importance. On the three occasions when conventions have been held their membership has been made up from the most eminent citizens of the Commonwealth. It may be doubted whether any more distinguished body of men have ever assembled in America since the adoption of the Declaration of Independence than were contained in the conventions of 1820 and 1853. Some of the speeches made in the latter Convention have become classic, and are still studied and admired by all who are interested in public affairs.

You are meeting to-day under the dispiriting influence of war, and at the first thought it might seem that the time was not propitious for your work. But with all its evils war often brings a quickening perception of conditions. It makes more alert the sense of danger, and experience has shown that under its shadows have been devised some of the most liberal and enduring systems of government. We have a convincing instance in our own history since our Constitution was framed when the country was in the throes of the great revolutionary struggle. The autocratic origin of the present war, sweeping like a devastating conflagration over the whole world, has produced a reaction in favor of popular freedom and those democratic institutions which it was the first purpose of the framers of our Constitution to establish.

We are now living in a very different world from that upon which our fathers looked. We have about us social and industrial conditions of which they never dreamed. In the place of the toll-bridge we have the great transcontinental railway. The spinning wheel has given way to the modern factory with its thousand looms. The slow and haphazard mail has been succeeded by the telephone, the telegraph, and the modern post-office. But human nature remains the constant factor, for it has changed little if at all from the earlier time, and the necessity is no less great now than then that power should be defined and political rights made secure. I take it that your duty is not so much to create a new Constitution as to adapt to modern conditions the principles of the Constitution already made. The highest fitness for your work is the ability to understand and to reverence the fundamental ideas of democracy and liberty that animated the men of 1780. That Constitution provided with greater perfection than was ever before witnessed a mechanism through which a democracy might express itself, and in spite of any obstacles that then existed, it was able to express itself fairly. The democratic idea will be, I think, the animating principle in your deliberations, and it will be your concern

to determine how it may most surely and safely express itself under the conditions of our time.

We have recently been told that the world must be made safe for democracy. There is a sense, I think, in which this expression would not convey the proper conception of democracy. Democracy is not a timid flower, an exotic which needs to be sheltered from the winds and storms, but it is a strong man, making his way in the face of tempests upon the open heath, having in him all the strength of the race, and there is no higher power which can patronize him and make the world safe for him to live in. He would be little attracted to the hothouse or to a fenced and protected enclosure. When democracy fully comes into its own, it will hold sway by imperial right and not by the grant and favor of anybody and it would perhaps be more true to say that democracy will come into its own not when the world is made safe for it, but when it has made itself safe for the world. It can be made safe by endowing it with the necessary organs, by giving it eyes and ears and sure methods of expression, and by giving it a spinality which will enable it to stand erect. Without appropriate organs it would be, as it has so often been, the easy prey of organized privilege; it would tumble about itself, and be as helpless with all its strength as the blind Polyphemus, the huge and shapeless monster to whom the light had been put out. Democracy has usually been at a disadvantage on account of lack of organization. From lack of organization it has been compelled more than once to bear the guilt of glaring faults and it has failed to promote the great ends of government. From lack of effective method of expression it has often seemed to be the government of the most violent and noisy while the great silent deeps of the people were untouched and dumb. A few men united can scatter confused counsels in a great mass divided, and made up of individuals animated by no common plan or purpose of action. Democracy has been too much regarded as a mere ideal to be declaimed about and not as something which should be shaped to animate and direct practical government in a responsible fashion.

Men who parade the streets in times of revolution with banners inscribed "Down with Authority" are not democrats. They are nothing less than assassins of liberty. The last thing they represent is democracy. Democracy is not opposed to authority. In the nature of things it is subject to it and cannot exist without it. But it must be an authority which is essential and inborn and not an authority that is artificial and imposed upon it. A democratic government is one in which the people rule. But their rule must not be arbitrary and subject only to their own desires. It must be based on justice. The chief purpose of a State is to secure order under justice. Order may be obtained by governments of the most autocratic character, but the element of justice will be little seen, for there can be no broad and comprehensive justice under a government of privilege which is itself a system of injustice to great masses of men. The mere counting of people does not establish what is right and what is wrong, for justice in every case cannot rest upon the will of the more numerous any more than upon the will of the stronger. The few who are at the moment stronger have no right to trample upon the many, and on the other hand, the many who by the power of numbers in a democracy are stronger, have no right to oppress the few. In either case the

right rests upon superior force, and if in the scheme of things right may be based upon power, then we must recognize force and not justice as the final arbiter of the world and there is an end to the moral universe. A great Nation with its armies may overrun a weak one, but the greater the relative strength of the oppressor the more heinous is his crime against Heaven; and in the same way in a State, a mass of men may not of right in their organized capacity do injustice even to an individual man. The limitation of justice must rest upon the action of those who are the more powerful because of numbers just as it must rest upon those who are the more powerful for any other reason; and when men have their rights taken away from them and are beaten down by oppression, there will always remain the cry to Heaven which it is nefarious ever to provoke.

Si genus humanum et mortalia temnitis arma,
At sperate deos memores fandi atque nefandi.

You may best provide against injustice by preventing snap judgments and securing to the great mass of the people the opportunity to see and to comprehend what they are about to do. Unless action is preceded by forethought, it is likely to be followed by repentance.

The government of a great democracy must of necessity be conducted by representatives or agents. But it is indispensable that the principals shall always be able to see how their government is carried on. There should be no invisible agencies, agencies not chosen by the people, and not acting in the public weal, but serving purposes of their own. In order that it may be pure, representative government should be so open that the winds may blow and the sun shine through it. There should be nothing secret or hidden in its operation.

Limitation upon government should not be wholly vague and general. Our system in America has express limitations and that is one of the distinctive things in our freedom. Certain fundamental rights of the individual are protected even against the encroachments of government itself. They are rights which have been established in the long struggle of centuries between autocracy and liberty; they are rights which are of the very essence of freedom and which governments have at times been prone to invade. Among them are the right of free speech and of a free press, the right to worship God according to the dictates of one's conscience, and the right to be heard by judges surrounded by every safeguard for the unbiased administration of justice.

I have failed in making myself understood if I have not impressed upon you the fact that the work of a Constitutional Convention possesses a peculiarly serious character. A Legislature acts only for the day. All that it does may be reversed by its immediate successor. Its mistakes may be rectified with comparative ease. The experience of the Commonwealth from year to year may be constantly invoked. But a Convention for the revision of the Constitution meets only at long intervals. Sixty-four years have elapsed since last an assembly of this kind met in Massachusetts. An equal length of time may pass before such a body is again summoned. This circumstance will, I feel sure, assist the Convention to approach its work in the most broad-minded spirit, lifted above that which is transient and of the day by the long vista of the years which lie ahead.

I would further impress upon you that the instrument which you are about to revise is the oldest written Constitution now in force anywhere in the world. If England is the mother of Parliaments, Massachusetts may boast with equal pride that she possesses the most ancient frame of government based upon the written word which anywhere exists. This is not a matter of mere antiquarian interest. Some of the peoples now engaged in the war need to be taught that democracy does not mean disorder. To Russia, immersed in the struggle attending the transition from autocracy to democracy, and to the other nations of Europe our history represents an invigorating example of stability, of freedom, and of order, that conclusively shows that liberty is not license and that the rule of the people does not mean the abrogation of law. It must make a convincing appeal to them that during the century and a half of the life of our Constitution there has been no spot upon the globe that has on the whole been better governed, that there has been no place where the door of opportunity has been more equally open to all the children of men, and that there has been no State that has better illustrated the blessings of free government and has made greater progress in those things that tell for real civilization. While the old order changes and gives place to the new, let us approach with reverence the work of adaptation and realize that that which has served us so well in the past and under which we have grown so great should not be lightly cast aside.

I will venture to add one other practical observation which I trust may not be without value to you. The Constitution of Massachusetts is not only the oldest written instrument of government now in force, but of all our State constitutions it is one of the most brief. This is no slight advantage. A Constitution is not a statute. It should be a declaration of fundamental individual rights accompanied by an outline of a frame of government through which organized society may perform its work. In our day, social and economic conditions change with great rapidity and statutes may be required which will soon become obsolete and outgrown. But if the Constitution, — the fundamental law of the Commonwealth, — is made to partake of the nature of a statute, if it shall attempt to specify in detail the rules which should govern the ordinary relations of men to each other and to the State, it cannot hope to have a high degree of permanence. In the period which has elapsed since a Constitutional Convention last sat in this Commonwealth, some of our States have had as many as four such bodies. Those States are not more unstable or prone to change than is our own, but having placed in their Constitutions matter statutory in its nature, they have been obliged to treat it as a statute and resort to frequent revision. It has been the good fortune of Massachusetts thus far to avoid this error. May this Convention preserve her in that happy condition!

And so, gentlemen, the superlative importance of the work you have undertaken justifies the sacrifices you are making. What you do here may affect profoundly the future of the Commonwealth for generations, and it may profoundly affect also the future of other States and of great populations beyond the sea. If you shall pursue your task with diligence and wisdom and your work shall be ratified by the people, you will have the proud satisfaction of having rendered your fellow-men a service as distinguished as it is unique. It is a happy

contrast that you present, when, amid the din of arms, when the tread of mighty hosts is shaking the earth and force is settling the relations of nations to each other, you are attempting to perfect a peaceful mechanism through which justice and reason instead of force may have sway over the destinies of men. May the influence of your example help somewhat to bring about the emancipation of mankind to the end that brute force may be supplanted by reason, and the hideous barbarism of war with its vandalism, its murder, its slavery, its rapine, and the other imps which it engenders, may be driven from the earth. [Applause.]

Address of Former Governor John L. Bates.

Hon. John L. Bates of Brookline, upon being elected President of the Convention, spoke as follows: —

Your Excellency, Gentlemen of the Convention:

I thank you for the confidence that you have shown and for the high honor you have conferred upon me. To serve as your presiding officer is a great privilege. It brings with it a correspondingly great duty. A full heart prompts me to say that it shall be my only purpose so to discharge that duty that your confidence may be fully justified. Without your hearty support I cannot hope to succeed. May all the differences that have attended the organization of this Convention "in the deep ocean of oblivion be forever buried," and may the President have your united, helpful coöperation.

The people have entrusted to us a great work, and we are here, in the language of the statute, "to take into consideration the propriety and expediency of revising the present Constitution of the Commonwealth, or making alterations or amendments thereof."

When the act was accepted by the people last November, in accordance with which we are now met, a large portion of the world was in a state of war. Since then our country has become involved in the great struggle. Yesterday our young men were numbered and registered that they might be called into the military service of the Nation. The greatest war in the history of the human race is being waged. Out of the confusion of its origin, and despite the proposals and ambitions of kings and men, it is each day becoming more clear that all humanity is divided into two great camps, and that by far the larger proportion fight shoulder to shoulder with us, not to change the boundaries of nations, not for conquest nor for spoils, but to down absolutism, to overthrow autocracy, and in its place to set up a genuine government of the people, to the end that "the world may be made safe for democracy." There is, therefore, a most interesting relationship between the world war and the work for which we are met.

The Constitution of Massachusetts was "the first written Constitution in which the people appear at once as author of the government and subject of its laws." Adopted in 1780, it became the model of all that have followed. When adopted, no nation on earth had a written Constitution. To-day there is hardly any without one, and in them all, whether it be the Constitution of a State in North or South America, in Europe or in Asia, one will find incorporated some of the principles that were first clearly enunciated in the Constitution of

Massachusetts, and oftentimes one finds a wording so similar as to show conclusively that the Constitution adopted by Massachusetts in 1780 has been one of the greatest factors in changing the form of government of humanity to that of a representative, constitutional democracy, under which the liberties of men have been secure and their progress unparallelled. It is the Massachusetts idea of democracy, then, that is the center of the world's storm to-day, and may God grant that that idea, triumphant throughout the world, may soon usher in an epoch of peace and liberty and good will for all the peoples of the earth. In these momentous times, then, let us approach our task with a view to help on the cause of democracy through constitutional government.

We have not been elected as representatives of any political faction, and approach the work with our minds free from any partisan prejudice. Let us not unduly delay on matters of mere procedure. May it not be with us "as with men whom small things move," but let us deliberate and argue fully the great things, the fundamentals, to the end that when our work is finished we shall in no way have impaired or weakened the great principles from which our strength has been derived, but rather, so far as found necessary, shall have increased their breadth and scope, so as more fully to adapt them to the conditions of the present age and the future progress of the State.

We are here for Massachusetts, and may all we do contribute to her prosperity, her security, her advancement, her strength, and her honor.

REPORT OF PROCEEDINGS AND DEBATES.

Mr. Powers of Newton, for the committee on Rules and Procedure, who were authorized to report rules and orders for the government of the Convention, reported, in part, on the 13th of June, 1917, recommending the adoption of the following order: —

Ordered, That the Secretary of the Convention be authorized to provide for a stenographic report of the proceedings and debates of the Convention and of the Committee of the Whole.

Mr. UNDERHILL of Somerville: I regret exceedingly that I should be the one to sound the first discordant note in the harmony of the proceedings of your committee on Rules. But, sir, I do not believe I would be doing my full duty to the people of this Commonwealth if I did not bring to the attention of the members at this time the full meaning of this order, which has been almost unanimously presented to this body by the committee on Rules.

I would call the attention of the Convention to the special legislative act of this year making appropriations for this Convention. Section 1 appropriates $350,000 for the expenses of this Convention. The following sections apportion that expense in various ways. There is a sum which covers the salary of the members, there is a sum which provides for the mileage of the members, there is a sum for expenses to be approved by the Secretary of the Commonwealth, making provisions for the primaries. The amount of that provision has been exceeded already, and the Secretary of the Commonwealth will have to make a requisition or appeal for an additional sum to cover the expenses of the primaries. For expenses approved by the Sergeant-at-Arms, for telephone and other necessaries, a small sum is also appropriated. Then the last section says:

For such other expenses, subject to the approval of the Governor and Council, as shall be deemed proper, a sum not exceeding $50,000.

I have gone into this matter very carefully, and I find that this sum of $50,000 will be necessary to carry on the work of the Convention, — the necessary work of this Convention, if you please. The office of the Sergeant-at-Arms must provide messengers, pages and other employees, who will assist the members in carrying on the work. The office of the Secretary must provide clerks and assistants, and provide also someone to assist the members in drawing various measures. The total amount which it is estimated these two offices will require is in the vicinity of $10,000 to $12,000, and that is a very conservative estimate. The printing which will be necessary for the Convention, samples of which you have on your desk, — the Journal of the Convention, the Calendar of the Convention, and the Orders of the Day, — are absolutely necessary and must be provided. The printing will cost in the vicinity of $15,000, — the regular print-

ing for this Convention. This, together with the other necessary expenditures, brings an estimate in the vicinity of $35,000, leaving a balance of $15,000 which can be used by the Convention for incidental matters, or can be used, perhaps, in part, in meeting the expenses of this order.

Let me call to your attention that the order provides that every speech in the Convention or in the Committee of the Whole shall be taken down verbatim in shorthand, and this shall be transcribed, and later on, if it is going to be of any value at all, it must be printed.

In the report of the Convention of 1853 there were 2500 pages of fine type. It is estimated that this Convention will take at least 2900 pages of fine type, or something like four large volumes. The estimate for that printing is about $20,000. The estimate offered for what is supposed to be sufficient in the way of stenographic help is in the vicinity of $6,000 or $7,000.

Now, Mr. President, there may be honest differences of opinion, and I grant you that there are in this case, as in every other. The object of this order is that posterity, law libraries, etc., may have the records of this Convention, at the expense of the people of this Commonwealth. At this particular time, when the people are staggering under excessive burdens, — income taxes, State taxes, local taxes, — when the people are trying their very best to meet the requirements of the situation, and taking from the stocking and from the hiding places their little hoards and investing in Liberty bonds, when we know not what demand may come upon us in a very few days or a few weeks, when we are importuned on every corner and our door bell is rung night after night that we may contribute to this or to that necessary charity, if you please, or organization, which is taking part in the great events of the day, Mr. President, — when the cost of living has reached a point where it is almost impossible for each and every one of us to make both ends meet, — I want, in all seriousness, to ask the members of the Convention if, while the people are crying for bread, you are going to give them books, — and dry ones, at that!

It seems to me, if we pass this order, it will be necessary to go to the Legislature next year and ask for an extra appropriation. My estimate of $50,000 is based upon a very conservative calculation; and, sir, if I may prophesy, and almost stake my reputation upon the prophecy, it will be nearer $75,000 than $50,000. Already we have appropriated through the Legislature $350,000. This will bring the mark very close to a half a million, and who is going to pay for it? It may not be out of your pocket, it may not be out of my pocket, but the only way in which this can be met is through the taxes placed upon the people of this Commonwealth. You perhaps are all familiar with the cartoon where there is a pyramid of men, one standing on the shoulders of the other, and the top figure is dressed in the garb of a soldier, and he says: "I fight for all." The next figure below is the figure of the bishop, clothed in his habiliments, and he says: "I pray for all." And below him, and on the shoulders of the next, stands the lawyer, and he says: "I plead for all." And at the bottom of the heap, with his poor bent back and his brow with the sweat of the day upon it, stands the laboring man, and he says: "I pay for all." It may not appal you, you may not notice it, but the laboring men and the people of this Commonwealth are going to notice this

additional expense at this time. Mr. President, when this Convention is so rife with the statements from every speaker "We are here in the interests of the people," I wish that someone would stand by my side this afternoon and plead for something substantial for those people. I think the matter of votes, perhaps, one of the dearest of our liberties, one of the best things in our institution of government, must come secondary if a man finds his wife and family are in need of bread, and lack the necessities of life. I do not believe that the privilege of the ballot is of such great moment to him then. And so without further remarks, simply putting this matter up to the Convention itself whether it desires to spend this money unnecessarily for unborn generations, if you please, people who will have no part in the payment of the same, why, then, sir, I am content that this order should be adopted. But if, on the other hand, any of you have felt the pinch during the past winter, if any of you anticipate what is going to occur during the coming seasons, then, sir, I hope every one of you will take the matter home to himself and that you will vote to save the money of the Commonwealth and to save the money of the people of the Commonwealth.

Mr. Luce of Waltham: The specific proposition before the Convention is that the proceedings of this body shall be taken down in shorthand. If this order prevails it will be followed in due time by an order providing that the proceedings shall be published. There is a middle course that the Convention may follow if it sees fit, which would entail the filing of a single transcript of the stenography in the archives of the Commonwealth, and not entail the immediate printing thereof. For the convenience of the Convention I may be pardoned if I discuss the whole program together, anticipating the possible introduction of the order on printing.

The motion follows the usual course of proceedings in conventions and the almost invariable practice of all the important law-making bodies of the world. It has not come to my knowledge that a single national or unusually important deliberative assembly now fails to provide for a complete verbatim report of what goes on within its walls.

In the matter of Conventions, so far as this State is concerned, the practice of printing reports of debates began with the Convention of 1788, which considered the adoption of the Federal Constitution. The Convention of 1780 was not reported. Its journal has been published. Such information as can be had about the views of the people of the Commonwealth at that time must be secured with difficulty from the musty archives of the Secretary of the Commonwealth, disclosing a marvelous series of discussions that took place in the town-meetings. In 1788 reports of the proceedings were published in two newspapers, and from those reports was compiled the somewhat fragmentary volume we now possess. Also Chief Justice Theophilus Parsons had foresight enough to take notes of the proceedings, and his notes have been found of a value corresponding to that of Madison's famous notes of the proceedings in the Federal Convention.

In 1820 again reliance was had upon newspaper reports. Nathan Hale, the publisher and the editor of the Boston Advertiser, was a member of the Convention, and under his direction Octavius Pickering, who afterward became reporter of the decisions of the Supreme

Judicial Court, was assigned to a seat in the Convention and made such report as he could for the Advertiser. That was printed in the following year in book form, and when the Convention of 1853 gathered, was deemed of such importance that a reprint was ordered. Any one who will look through the volume of 1820 must be impressed with a feeling of thankfulness for the newspaper enterprise of the day, in view of the lack of action by the Convention itself.

In 1853 a full report was ordered, with very little discussion in the Convention. In candor I should say that Nathan Hale himself, who had directed the report of 1820, saw fit in 1853 to deplore the publication of the verbatim proceedings, because he thought they invited to prolixity and verbosity. Nevertheless, the Convention by an overwhelming vote decided to print its debates, and as a result we have an invaluable treasury in the three great volumes with which I presume every member here is more or less familiar.

The Pennsylvania Convention of 1873 and many other Conventions, notably the recent New York Convention, all followed this example, and certainly something is to be inferred from the combined wisdom of all these Conventions as to the usefulness of preserving a report of proceedings.

The gentleman who has preceded me has suggested that perhaps we will exceed the limit of the appropriation made by the Legislature. It should be pointed out that the appropriation made by the Legislature was in the nature of an emergency appropriation, for it had no powers in the matter except to put at our immediate command the money appropriated. All the authorities, so far as I know, and I am certain all the authorities of importance, agree that it is within the province of a Constitutional Convention to expend all the money it may deem necessary for the proper performance of its work and to bind the credit of the State for that purpose; and if, perchance, unforeseen exigencies should demand a very much larger expenditure than that which the Legislature thought probable, it will be normal and it will be right for us to incur it. But it will not be either normal or right for us to make any expenditure not pertinent, not proper to the work of the Convention, and therefore in seriousness we should ask the question whether the preservation of these debates is a matter of public service to which we ought to attend.

The reasons for the preservation of debates are not the gratification of individual vanity, nor the furnishing of material with which to delight the curious or the antiquarian. The purpose of printing the debates is twofold: First, that the people of the Commonwealth in passing judgment upon whatever proposals we may make, shall have at hand a record of the reasons here advanced in favor of and against those proposals. It would seem to be somewhat inconsistent for the State to engage in an expenditure of $400,000 or $500,000 in order to hold a Convention and then begrudge a small fraction of that amount for the purpose of informing the voters fully as to the reasons for our action. And secondly, there is the broader purpose, the more enduring purpose, that we in turn shall do for generations yet to come what those who have passed before have done for us. It is by the record of their experience that we learn; by its lamp are our footsteps guided.

Why, sir, all human action is based on the record of the past.

Precedents are not alone the province of the lawyer; precedents are the province of mankind. We all look back to the accumulated record of the past in order that we may avoid its errors and profit by its wisdom. Take, for instance, the experience of this Commonwealth. It is probable that in this Convention once again will arise the question of the relation between church and State. Where will you find a more adequate discussion of that matter, set forth with more earnestness, more zeal, more tolerance, than in the report of the debates of 1820? And shall we not profit by the errors of those who then discussed the great problems of life? Turn to the volume of 1820, and there you will find as perhaps its ablest speech that of Daniel Webster in defence of property as the basis of representation in the Senate, an error we have now discarded. Is it of no use to find why he took what we think now the wrong ground?

Turn over the pages farther. You will find a most interesting speech by Joseph Story in defence of property. It has a ring not familiar in these days, and yet one will do well if, from the current literature, he turns back near a hundred years to the words of the great Massachusetts citizen who dared to defend thrift, who dared to defend foresight, and who spoke eloquent words that ought to appeal to reason even to-day.

Let me again refer to the Convention of 1820. I am not, sir, one of those who feel we are here improperly. I am of the belief that the people have a right to vote to revise, alter or amend the Constitution. But there Daniel Webster made a speech defending the report of the committee on that subject, in which he said the committee did not foresee any probability that the Constitution as a whole would ever need revision. At least that might instruct us, if to no other purpose than to show that, after all, no generation reaches the goal of human thought. The men of those times believed the Constitution was as secure as the pyramids themselves; and yet you who have visited the pyramids know that their surface is crumbling, that their bases are covered with the sands of the desert, that the chambers within are empty. The soul of the pyramids is gone and only the skeleton remains. But forgetting that, Daniel Webster told the Convention of 1820 there never would be occasion, in his opinion, for a revision of the Constitution, and therefore no other method was suggested than that of amendment by the course now familiar, of legislative action. I do not think he was right. I believe that before we have finished our labors we shall deny his view. But frankness leads me to add that if we are to reach the true conclusion on this occasion, we must take into account the reasons that led to the action of 1820, reasons to be found in the printed report.

Or turn to the Convention of 1853; there, too, you may gather information useful to-day. It is not impossible that we shall here consider the question of an elective judiciary. There you may find that the result of a long and earnest debate was a compromise, with a recommendation that judges should be appointed for a term of ten years. Read those able speeches and get inspiration for the task before you. Read the great speech of Rufus Choate, read the wise words of Professor Greenleaf and Professor Parker of the Harvard Law School, read the words of Richard Henry Dana, Jr., — aye, even the words of Benjamin F. Butler, and then find that there is nothing new

under the sun, and that we in our turn are to answer questions our fathers answered. Let us hope we shall answer them more wisely, because we shall have not only the benefit of their wisdom, but also the experience of the years that have gone since they spoke.

There is no lawyer within the sound of my voice who does not know that within careful limits the courts are accustomed to accept information as to the circumstances under which constitutional provisions came into being. Is there a lawyer here who does not grieve because there was no stenographic report of the Convention that framed the Constitution of the United States? Is there a man of letters here who does not know that in all the literature that has come from the American press perhaps there is no single set of volumes more precious to our liberties, more important to our welfare, than the five volumes of Elliott's Debates, containing Madison's notes and what was said in the State Conventions? This is why the question before you is one of far more than passing interest, why it concerns the very foundation of law, perchance, in the years to come.

Our laws relating to general incorporation found their origin in the debates of 1853. The framework of our cities rests upon the debates of 1820. I might enumerate to your weariness the long list of other important questions there ably discussed.

Ah, but I know, in due and fitting modesty, some member of this Convention will say to himself that there is none here capable of speaking words worthy of preservation; that we have lost the proud position of those who made fundamental laws for the Commonwealth before us; that to-day there is no Daniel Webster to thrill the world with his eloquence, no Joseph Story to bring the lore of legal learning, no Rufus Choate, no Henry Wilson, no Boutwell, no Burlingame, no Banks, no Dana. Perchance in their day they might with like modesty have said the same thing.

> Their noontime never knows what names immortal are;
> 'Tis night alone that shows how star surpasseth star.

And when we shall have entered the long night, perchance there may be names of this Convention that will shine in the very zenith. Perhaps words we here speak may serve generations that are to follow. Perhaps the very friction of our ideas may stimulate them to wiser conclusions. Perhaps we in turn shall have done our duty and by our addition have given to the years of the future a stock of wisdom beyond that which we have received from the past. [Applause.]

Mr. UNDERHILL: I recognize how little ability I have to answer the splendid rhetoric and eloquence of the gentleman, with whom I usually agree. Possibly it is because we live in a different environment. His plea to the lawyers of this body was indeed a masterpiece, and it is something with which I probably shall find it is impossible to compete or contend. But, sir, if I may be excused a personal reference, I hold the position in my city of president of one of the great charitable organizations of that city of 100,000 people, and sir, the things that I have seen during this last hard, cold winter make me appreciate, if nothing else would, the value of a dollar. I ask you of what value to the unborn generations this volume or these several volumes of the proceedings of this Convention will be if, when born, the mothers hold to their dying or drying breasts the mouths of the babes they are unable to satisfy.

Mr. President, the conditions are worse than any of you realize or recognize. The lawyer of this Convention and the lawyer in practice does not pay the bills for the stenographic reports of the case; the poor plaintiff or defendant does that. We in ourselves are transferring this burden from our shoulders and pocket-books to the shoulders and pocket-books of those less able to meet the expense. And, sir, our principal reason for being here, the principal purpose, if you please, is not to hand something down to posterity in the way of speeches, it is to get out a Constitution. The newspapers of to-day are just as progressive as, if not more than, the newspapers of 1853 or 1820, and all that is necessary in the way of verbatim reports of speeches will be found in their columns. I want to warn this Convention that if this order goes through you will find undoubtedly that there will be man after man who will extend his remarks, who will unnecessarily hold forth, in order that he and his name shall go down to posterity. I may possibly hurt my cause, but I still call to your attention the character and quality of the debates which we have already heard and ask you if you think they are worthy of a place in a volume or a volume of volumes to go down to posterity. [Applause.]

Mr. President, the gentleman has put the responsibility where it belongs. He says we are not bound by any action of the Legislature; nor are we. We are bound by our own action, and the responsibility rests with us. But in the days of the coming legislative session you will find if we exceed the appropriation so generously provided, with an increase in the taxes, with an increase in the burdens of the people, the odium will not rest with the Legislature but with this Convention, and its expression will be in speeches in the legislative session and which will not go down to posterity, but which will be used for immediate consumption.

Mr. President, I do not wish to prolong this discussion. I simply wish once more to call to the attention of this Convention that the conditions to-day are far different from the conditions of 1853 and of 1820; that to-day the people need every single solitary cent they can lay their hands on or save from the tax collector, and that in those days we had prosperous, good times, without the accompaniment of war and all of the horrors which it brings. Now, sir, if the Convention wishes to place this burden on the people of this Commonwealth of Massachusetts, if it wishes to assume the responsibility, at least my conscience is clear. I leave it with the Convention.

The order was adopted, by a vote of 186 to 52.

On the 14th of June, 1917, Mr. Joseph J. Leonard of Boston offered the following order: —

Ordered, That the committee on Rules and Procedure consider and report whether a method may be devised whereby proceedings and utterances deemed worthy of future reference may be printed in good readable type, and that all other material be printed in a smaller type.

Mr. Leonard of Boston: I have offered this order after looking at some of the reports of the debates of previous conventions, and also after listening during the past several days to the discussions in this chamber. I think we all will agree that the great fault of our public documents is that generally they are printed in a uniform type, and

any scholar or student who will take the proceedings of the last Convention and endeavor to separate in them the wheat from the chaff is confronted with a very serious and difficult task. It has impressed me that if some mechanical method had been devised by our forefathers of seventy-odd years ago we all would be greatly facilitated in getting at the material matters that were uttered in that Convention of 1853. Now, I understand and I feel, perhaps, that some people might say that in offering this order I am trying to infringe upon the right of an individual to have his utterances given the same circulation as those of any other individual, and that we all have the same right to give expression to our thoughts, and our ideas are of equal value, no matter upon what subject they may be expressed. I have no idea of that sort. I think in these days of efficiency we ought to be able to devise some means whereby the material of this Convention will be accessible to the reader of the future. Now, I would like to say right here if the reader of the future record should happen to look at my remarks, that up to the present time if he will read carefully the address of His Excellency the Governor and the address of the President of the Convention, and also peruse the debate on the question of the open ballot and the discussion which occurred yesterday between the chairman of the committee on Rules and a member of the same committee upon the question of stenographic reports of these proceedings, I think he would have most of the material that is worthy of preservation up to the present time.

Now, I have listened to a great many voices here that have brought from time to time mandates directly from the people. It seems to me as if some of the delegates feel that they are inspired to give us a message directly from the people upon each and every method of procedure, even including those matters upon which the people themselves have not given any expression or thought. That may be so, and if it is, it is a remarkable and unusual gift. It is a gift that comes by inspiration, I should say, or by some sort of superhuman revelation. But in my experience I think that the people of this Commonwealth, through several generations of trial in self-government, have adopted a means of utterance that generally is sound and at the same time decisive, and whether they speak from the bench or the farm, or the workshop, or the factory, or the office, or the bar enclosure or the judge's bench, their voice is generally heard and generally heeded. Now, it may be that some of these utterances are really the spoken voice of the people, and if that is so, even though they are printed in very fine print those utterances will be found by the future scholars, because one of our great philosophers has said that if a man makes a mouse-trap that is better than that produced by his neighbors, even though he builds his house in the wilderness the world will make a track to his dwelling-place. So I should like to suggest to the committee on Rules some method of considering the typographical make-up of the debates of this Convention, if the debates are to be printed, and I understand that is a matter that is under consideration at present. It may be that the idea that I suggest may seem impracticable, but it might be possible to devise some authority or judicial body that could pass upon what was worthy of preservation and what should be put in finer type.

To sum it up, whether you agree with the idea that one man's utterances should be in larger type than another's, there is this to be considered, — whether we cannot, in the mechanical make-up of the proceedings, give a sort of a running history right through the three or four volumes that may be printed; just the same as a lawyer endeavors to find out the prominent authorities and leading cases, giving some prominence to those matters of debate or discussion that are of importance and less prominence to those that do not seem to be of interest to the future. I offer that order and ask that it be submitted to the committee on Rules for their consideration and report to the Convention at some future time.

The order was rejected.

On the 21st of June, 1917, the committee on Rules and Procedure recommended the adoption of the following order: —

Ordered, That the Secretary of the Convention be authorized to contract with the Wright and Potter Printing Company, at prices not exceeding those paid by the Commonwealth under its contract with said company, for the printing and publishing of not more than three thousand copies of the Journal of the Convention, in addition to the sheets furnished for daily requirements; of not more than two thousand copies of the reports of the commission appointed to compile information and data; and of not more than three thousand copies of the Debates of the Convention;

Ordered, That the volume or volumes of the Debates of the Convention be confined to verbatim reports of debates in the Convention, or in Committee of the Whole, concerning proposals to revise or amend the Constitution, or questions relating to (1) the form, manner or time of submitting to the people any amendments adopted by the Convention, (2) the powers or rights of the Convention or any of its members, (3) the returns of elections of its members or the filling of vacancies in its membership, (4) the record of its proceedings or debates, or the printing or publishing of the same; together with such appendices, index and other matter as the committee on Rules and Procedure may deem it desirable to have published in such reports;

Ordered, That one copy of the Journal of the Convention, of the reports of the commission appointed to compile information and data, and of the debates of the Convention, be furnished to each member of the Convention; that not more than five hundred copies of the journal, commission reports and debates be distributed to libraries and for other purposes of education, or to officials; and that the remainder of the copies be sold at a price approximating the cost of paper, press-work and binding;

Ordered, That provision be made by the committee on Rules and Procedure for the preparation, publication, distribution and sale of the volumes herein referred to, and of such other documents or reports as may hereafter be ordered to be printed;

Ordered, That all motions for printing, except in the Journal or Calendar, and all motions for the purchase of publications, shall be referred to the committee on Rules and Procedure for report before final action.

Mr. Underhill of Somerville: I regret that I feel obliged to inflict myself upon the members of the Convention, but I do not think it would be right to allow this order to go by without serious consideration. I hope that every member of this Convention will read the various provisions of this order, and each for himself say whether he thinks this is the proper time for the passage of such an order through this body, or whether he thinks it can well wait until later, and perhaps forever. Mr. President, this is a continuation of the line of argument I opened up some day last week, when the order for the employment of stenographers and the reporting of the proceedings of this Convention was before the Convention; but, sir, where that order involved only an expenditure of from $7,000 to $8,000, and might be considered a perfectly proper and necessary expense by the

members of the Convention, this proposition is of an entirely different character. This proposition before we are through with it will cost in the vicinity of $50,000, without any doubt. The expense alone should really result in its rejection, but that is not the worst feature of the passing of this order at this time. I cast no reflection on individuals, but there are many members of this organization who are interested in political booms, political ambitions, and if you pass this order as it is drawn you will have at least four weeks of stump speeches to be printed at the expense of the Commonwealth and circulated in the fall to aid one's election to the House or to the mayoralty of some city, or the return to office of some political office holder. That to my mind is one of the worst features of this order.

I ask the indulgence of the Convention while I point out how this might possibly be handled and yet get all of the information that is necessary for the antiquarian of the future generations. It seems to me that today, when all of us are trying to conserve not only our energies but every commodity that is at our demand and command, when the price of printing paper is extremely high, when we are told to economize in every direction all of the natural resources, we can well put off the publication of the speeches which are to be delivered in the Committee of the Whole and in the Convention itself until some later day, and some other body rather than this one then might edit the matter, revise the debates, separate the wheat from the chaff and publish, if they please, a report of the proceedings of this Convention, together with such speeches as may have stood the ravages of time or had the approval of time set upon them, and then that body could provide for the payment of the same. At that time I hope and pray that our country may be in a better condition, that our State may be in a better financial situation, to handle the expense involved. There could be no objection, and no charges of favoritism brought at that time, but the real meat of this Convention and what it may bring forth would then be issued, and probably one volume would be sufficient to hold all that was necessary. I do not stand here with any plea of pressure or to urge my views upon this Convention, but, sir, in the committee that considered this question there is no unanimity of opinion. A bare majority considered this a proper time to pass this order. And so I submit to you with those who agree with me in the committee that you should study the question seriously and solemnly, from a standpoint of economy and good judgment, before you pass the order.

Just one further matter and I have finished. I noticed the other day, when I asked for a standing or rising vote upon the question of the employment of stenographers, — and really the whole question was debated at that time, — that the self-constituted tribunes of the people were conspicuous by their absence among those who stood to reject that order. I did not ask at that time for a roll-call, for I did not wish to take unnecessarily the time of the Convention. The only man in this Convention who stood by my side on that day is a man who has had considerable experience and association with the poor people of this Commonwealth, and my thanks are due to him for his efforts, not in my behalf but in behalf of those people whom he represents. Today I shall take a different attitude, and I shall ask and expect every man in this Convention to be willing and ready to place

himself on record on this question of spending the money of the people of the Commonwealth of Massachusetts at this particular time, when they need every cent they possibly can save from the tax collector and from the high cost of living.

Mr. LUCE of Waltham: After the discussion of this matter last week the desire of the Convention had seemed to be clear enough to warrant the hope that there would not be occasion further to take its time or to elaborate the arguments; and to-day it is not my intention to tax the patience of the Convention to hear a repetition of all the reasons presented in the previous discussion. There were, however, some facts which were not brought to attention which may now aid the Convention in reaching a conclusion a second time.

I have before me a list of 25 cases in which the highest courts of our different States have accepted the debates of Constitutional Conventions as evidence of what was meant by amendments there adopted. I could read to you an opinion from our own Supreme Judicial Court, — not a decision, but an opinion, — showing that its members went even outside the debates, to recorded statements made outside the Convention, for the purpose of ascertaining what was meant by an amendment. And I will crave your patience while I read just two lines from a decision in New York:

"The Courts," it says "have characterized the printed copies of Convention debates as the most unequivocal proof."

The record of what we here do will be the most unequivocal proof of what we here mean. In the very last Constitutional Convention in New York, in the course of debate, this statement was made:

We understand the rule of constitutional construction to be that the courts may look to the records of this Convention to find out what we mean.

It goes on to justify the action of the Convention because the courts would look to the records of the Convention in the construction of the amendment. Elihu Root, who served in that Convention, persuaded it that this matter was of such grave importance that the reports of debates in the Legislature ought to be preserved. I would not go with him that far, for the reports of the Legislature would have no standing, presumably, in a court of law. But there is no lawyer within the sound of my voice who does not know that if we propose amendments and if they are adopted by the people, the time will come when the interests of men will hang upon the construction given to them by our highest tribunals; and shall we deny those tribunals the opportunity to know what we meant? That would be our action if we concealed our debates from the world.

It has been suggested that the time is not yet arrived to decide this question. There are mechanical difficulties in the way of postponement. If you do not decide it until close to adjournment, then these volumes will be piled upon the State printer at a time when in all probability his presses will be taxed and at any rate there will be a delay of months, possibly running into years, before these volumes will be printed. A reason for the immediate publication of these debates, is that the people may know what we meant, — the people, when they discuss this matter next fall, when they go to the polls, that they may have read with their own eyes the reasons for our action, or else may have listened to those whose duty it will be, — and I include every man

in this Convention, — whose duty it will be next fall, with memory refreshed by the record, to tell the people why we have given this or that advice. And therefore, in order that the prime, the chief, the all-important duty may be instantly performed, this matter should be decided now and we should at once state whether we will follow the precedent of many previous Conventions, and at least eight out of the last ten Constitutional Conventions that have been held. We shall fail in our duty unless we shall do as they have done, recognizing that those who are to vote upon the questions we submit have the right to know why we advise this or that course. With that duty in front of us is there any man here who will say that, expending a half million dollars, — it may come to that, — for this Convention, the people will begrudge the fifteen, twenty, twenty-five thousand dollars, or even more, necessary for us to do our work right? It was the mandate of the people that this Convention should be held, and coupled with that mandate and part of that mandate was the order that we should do this work to the best of our capacity, that we should do it aright; and this work will not be done aright if a record is not preserved and if that record is not put within the reach of every voter in the Commonwealth at the very earliest possible moment.

The order was adopted, by a vote of 157 to 26.

Manual of the Convention.

The committee on Rules and Procedure reported Tuesday, September 18, 1917, that the following order ought to be adopted:

Ordered, That there be printed one thousand additional copies of the Manual of the Constitutional Convention, five hundred to be distributed under the direction of the Committee on Rules and Procedure and five hundred to be offered for sale at cost.

The order was considered by the Convention the following day.

Mr. Underhill of Somerville: When this matter came before the committee on Rules and was voted on in that committee, I asked to be recorded as a dissenter. Some mistake has been made, and I was not so recorded. I simply wish to bring to the attention of the Convention once more the fact that this is another one of those printing orders for the expenditure of the people's money in order that the proceedings of this Convention and all of that sort of thing may go down to antiquarians or somebody else. In other words, that one thousand additional copies of the Manual may be printed; that the committee on Rules may distribute to the public libraries of the State five hundred copies, and that the rest of them may be sold by the printer at cost. Provision has been made that the printer may sell these at cost; and if any man here is patriotic enough or philanthropic enough to buy a copy for his library, he can get it for one dollar each, and he can save the people one thousand dollars in the publication of this document.

Mr. Williams of Brookline: This order came before the committee on Rules with a recommendation or rather a letter from the Commission to Compile Information and Data, to the effect that the edition of five hundred copies had been exhausted, and that there were demands from many of the libraries and public institutions of the Commonwealth to the extent of about four hundred. It seems desirable

that those institutions and libraries should have the benefit of a copy of the Manual. It contains a great deal of valuable information. Undoubtedly it is one of the best documents that ever has been prepared relating to the Constitution of Massachusetts. Any student of the Constitution of Massachusetts would like to have access to it, whether residing in the Commonwealth or elsewhere.

There was a suggestion that the public printer should take the risk of publishing it at a dollar a copy, — they cost, by the way, fifty cents. It seemed wise to the committee to keep the sale and distribution in the hands of the Convention, or its committee on Rules and Procedure, so that the public institutions and libraries could be supplied and that the others could be sold at cost. Your committee did not think it is wise that the Commonwealth of Massachusetts should go into the business of selling books at a profit. Therefore your committee, with the exception of the gentleman from Somerville, was unanimous in recommending the adoption of the order.

The order was adopted.

CONTESTED SEATS IN THE CONVENTION.

The committee on Elections reported, July 18, 1917, no action necessary, on the communication from Jasper N. Johnson of Medford, claiming to have been elected to membership in the Convention from the Twenty-fifth Middlesex Representative District (Doc. No. 328).

Mr. SHAW of Revere: As there has been some misunderstanding regarding the rights of the minority members of the Election Committee in regard to that particular matter, at the request of one of the minority members I make a motion that the whole matter be recommitted to the committee on Elections.

Mr. GEORGE of Haverhill: I think if any minority member wants this recommitted he ought to have the courage to make the motion himself. As a matter of fact there is no minority report. This matter was heard, the petitioner was given all the opportunity that he asked for, the vote was taken and the committee made this report, — a unanimous report. They were asked if there were any dissenters and nobody dissented; and five days after that action we find that the petitioner wrote a report himself and went out and, through a misapprehension, secured the signatures of three or four members of this committee, one of whom had voted in favor of the report, no legislation necessary. Now I have had some experience with legislation, Mr. President, but I never heard of any such transaction as that, when a petitioner draws his own report and then comes up here and deposits it himself. There was not a member of the so-called minority that the gentleman speaks of who would deposit or file that report. It seems to me there is nothing gained by recommitting this report. If there is anything that the gentleman from Revere fails to understand, the committee is able to give him any information he would like. But I think it would be a great deal better if these so-called "minority members" would come in here and make their own motion instead of sending a substitute.

Mr. SHAW: There is not anything in regard to their rights that I do not understand, Mr. President, but a member of the committee told me that they did not know what their rights were, that they were absolutely ignorant as to legislative matters, and that when this report was in the committee they did not know what their rights were; they did not believe they could do anything else, as a majority of the committee signed the report, and they desired the report recommitted to the committee in order that they might exercise their rights. I think as a matter of courtesy, if nothing else, on behalf of this entire body, that the circumstances of the case should be taken into consideration in regard to these committeemen, in order that they may preserve the rights which they have.

Mr. GEORGE: I have had an opportunity to talk with these members and I do not find them so green as the gentleman thinks. They

understand the situation; perhaps the gentleman from Revere thinks he understands it; being a partner of the gentleman who has petitioned for this seat which does not belong to him, he may have information first-hand. There is nobody green on this committee; they fully understood it. We had a hearing covering two days and these gentlemen were there, every one of them, and when we took a vote there was not a dissenting vote in the committee, and this report came in here as the report of the committee and there is no minority report, except, as I say, that the petitioner went to work four days afterwards and drew a report and then, through a misapprehension, secured the signatures of certain members of this committee.

Now those members of the committee are here; let them speak for themselves. The man who is "green," — let him come in here and speak. Let us have the facts. I never heard of such a proposition before and I never read of a proposition of this kind, that after a committee had taken a vote and adjourned for five days and had presented a unanimous report, that a petitioner who does not belong to this body should write a report, a bogus report, a misrepresentation, and then secure the signatures through a misrepresentation and then try to spirit this report in here himself. Boss Tweed of New York in his palmiest days never went up to Albany and played any such trick on the Legislature. I think we have fooled with this long enough. I am perfectly willing that the Convention should recommit this report. If we had known that there was going to be a dissenter we might have made a more elaborate report, but it was unanimous and what was the use of making a long report when the committee had heard the case and were all of one mind with respect to giving this petitioner leave to withdraw?

The motion to recommit was lost, and the report was unanimously accepted.

The Report of the committee on Elections, leave to withdraw, on the communication from Patrick H. Jennings of Boston, claiming election as delegate at large and asking for an examination and recount of all ballots cast for delegates at large, was considered on the same day.

Mr. Timothy J. Driscoll of Boston: In my opinion, the committee on Elections secured sufficient evidence to have a recount of all ballots cast in the State. The committee on Elections had a tabulation before them which showed many erasures and irregularities in the counting and tabulating. The Governor's Council did not adhere to the election law. The election law requires that the Governor and five members of the Governor's Council shall be present when the seals of the returns of the cities and towns are broken. The Governor was not present. Five members of the Council being present, the seals were broken. On the first day some of the Governor's Councillors were present, and some were not. They left the counting and tabulating to clerks, which was a violation of the law. The returns were given out that Arthur D. Hill was elected as a delegate to the Constitutional Convention. They called in the secretary, Mr. Boynton, to verify the statement that Mr. Hill was elected. Mr. Boynton verified the statement; the certificate was sent out to Mr. Hill, and then the men who were interested in Mr. Jennings' campaign came to the State House and asked the Governor's permission to tabulate the count of the vote. After tabulating the count they found in the Essex County

returns a mistake of 13,000 votes. Then a request was sent to Mr. Hill to return his certificate to the Governor's secretary, and he did so. The mere fact is that Arthur D. Hill would have been declared elected and would be sitting in this Convention to-day had it not been for those men who went to the Governor's Council and spent all day in tabulating the votes as they were returned to the State House. In many cities and towns there were numerous erasures, and in one town a bottle of ink was spilled all over the returns.

I think that it is no more than right and just to all the people of this Commonwealth who have doubts in their mind whether Mr. Jennings was elected to this Convention that a recount should be had. The official press reports declared him elected, and the discrepancies in some of the counties were as high as 1,000 votes.

Mr. DEAN of Fall River: I hope that the members of the Convention have read this report of the majority of the committee on Elections. I think perhaps the simplest way to deal with this matter is to go over what took place regarding the election May 1 and to go through the final tabulation by the Governor and Council.

On the 2d of May the Boston Globe stated that Patrick H. Jennings of Boston was one of the duly elected delegates at large and he led Charles F. Choate, Jr., of Southborough by a little less than 300 votes. The paper also stated that 75 towns were missing. The Boston Evening Transcript gave a similar return, stating that four districts were missing, but in the tabulation of the result of the vote in the cities the Transcript made a mistake of more than 800 votes. It gave Mr. Choate 4,109 votes when as a matter of fact he received 4,980 votes in Worcester. That difference of 871 right there more than takes care of any lead that Mr. Jennings had over Mr. Choate. The returns from the missing towns, however, were slowly coming in. The Cummington return, which I hold in my hand, came in on May 17.

On the 22d of May the Governor's Council tabulated the vote. At that time it made a mistake in counting the vote for Arthur D. Hill in Essex County. That vote was counted twice for Mr. Hill. He was given 25,600 votes instead of 12,800 votes in Essex County. The following day representatives of labor organizations went to the Governor's Council and asked to see the returns and tabulation sheets, and they went over the vote, and as a result of their work this mistake for Mr. Hill was found. Let me say, as is pointed out in the report, that no change was found in the vote cast for Charles F. Choate, Jr., of Southborough, or for Patrick H. Jennings of Boston; their votes have remained the same throughout. The alterations and erasures on the tabulation sheets, and I have a copy here before me, show absolutely no change in the vote of the sixteenth and seventeenth candidates who were running for delegates at large; their vote remained the same. Friends of labor who looked into this matter do not contend that there is any change, so far as any official return goes, in the vote of Mr. Jennings or of Mr. Choate. They did, however, finding this vote for Mr. Hill, ask the Governor and Council to retabulate and to correct this error, and this was done May 29. Mr. Choate was then the sixteenth candidate and duly elected, and Mr. Jennings was the seventeenth candidate. Their votes remained the same; Mr. Hill dropped back to the place that he had previously held.

All that the friends of Mr. Jennings have to base their claim on is

the fact that the newspapers stated on the day after election, with 75 towns missing, that Patrick H. Jennings was elected. There was this mistake in the Governor's Council; this was corrected, however, on retabulating. The final tabulation May 29 exactly agreed with what labor found when it retabulated. There was found, for example, a piece of paper like that. [Exhibiting a paper to the Convention.] Before the hearing a great deal of emphasis was laid on that, and we were asked to go over that return, and told that we ought not to have a new return but that we ought to recount the votes not only in the Cummington district but in the Commonwealth of Massachusetts. Now, sir, what does the return for Cummington tell? You can see it. How important do you suppose it is regarding the vote of Massachusetts? Well, the ink is still over it. According to the return Charles F. Adams has 20 votes, Charles F. Choate of Southborough has 18 votes, Patrick H. Jennings of Boston no votes. And they brought this in as a result of that and urged we ought to go back and recount the votes of all the cities and towns in the State.

We sought on behalf of Mr. Jennings to find wherein these errors had been committed, and the best information we could get was that the Council had bungled their part of the work. We admitted it, and we said: "We will go back and start where the Governor's Council started, and we will go over this vote." So this committee spent a week in tabulating, getting the returns from the cities and towns, making our own figures up and retabulating them, — and with what result? We came out with identically the same figures in point of tabulation made by the Governor and Council, and Mr. Choate was still elected over Mr. Jennings by 1,640 votes. As I have said before, there was no change in the vote counted for Mr. Choate or Mr. Jennings.

The petitioner came in and said: "Because this suspicion has been created, and because there was a difference in the returns from those reported by the Associated Press, we ask that you proceed to recount all the ballots." No single individual request of that nature could safely have been entertained by the committee. There was absolutely no evidence given to the committee of any error in the marking of the ballots.

The majority of this committee feel that under those circumstances they have done all that they could, all that they were required to do, — starting in with retabulating the vote, disregarding the vote of the Governor and Council, and drawing their own conclusion that Mr. Choate was duly elected. To go further seemed to be unfair, and seemed to be unreasonable. I trust that the present motion to substitute the minority report will be defeated.

Mr. Moriarty of Boston: Being one of the committee that did the tabulation after the executive authorities of this Commonwealth were not able to find the mistake, I happened to be one of the men who went in there and found the mistake, — not as any representative of any labor organization, but as a citizen of this Commonwealth. Three men who were with me were likewise citizens of this Commonwealth, and we came here without any classes, and we came here as representatives and citizens of this State.

I want to say, as being one of the members who appeared before the committee, that I never mentioned the tabulation sheet of Cum-

mington. I want to say to you members of this Convention, do not let them becloud the issue by holding that tabulation sheet up here, that there are not over fifty votes on, and think that we were going to change the situation by that. The man who reported for the committee does not even tell you the whole of Worcester. He does not tell you that Mr. Choate gained 800 in Worcester, and Mr. Jennings lost 1,000, in just the city of Worcester. If the newspaper reports were correct, Mr. Jennings would have been sitting here instead of Mr. Choate.

I want to say that on Friday prior to the Governor's Council making their report there was a letter seen in a prominent attorney's office in this town. That prominent man in this town happened to be seated, or to have a seat, in this Convention. The report had got out that Mr. Hill had gained a place in the delegates at large by an increase from twenty-fourth place to fourteenth place, jumping ten places in the list. On Saturday morning we got the word. We came to the Secretary's office, but after closing hours. We were told to come around Monday. We went there without any action of any organization, — to show that it is not the labor movement but it was individual citizens of this Commonwealth. On Monday we came and talked with Mr. Boynton. He told us that we could have the tabulation sheets immediately on the Governor's Council making their report. He told us that he was not satisfied with the tabulation made by the clerks of the Governor's Council and that he was going to have a retabulation that day, and that he would give us his report at four o'clock that night if we would return. We came back approximately at four o'clock. He said: "My clerks have gone over the tabulation of the Governor's Council and we find the tabulation correct, giving Mr. Hill a seat in the Convention." We said again to him: "When can we have the tabulation sheets?" He replied: "Immediately on the Governor's Council going into session."

We came here on Tuesday, and at twenty minutes of two I received from the executive secretary the report of the Governor's Council, even before they had gone into session, — a printed document stating that Mr. Hill had a seat and had been declared elected a delegate at large to the Constitutional Convention. Mr. Long, the secretary of the Governor, told us that the Governor's Council was not going to approve the election that day, but they had to come back on Wednesday; that they had an appointment for the unveiling of a statue and that they were going to do it the next day; that if the committee that I happened to be one of found any mistakes they would rectify them on Wednesday. But Mr. Boynton was called in before the Governor's Council, and after being in there an hour and twenty minutes the Governor's Council did take a vote and approve the election of Arthur D. Hill of Boston. They came out at twenty minutes of four, and he said: "You can have the tally sheets now at any time." We said: "Well, we will be back here to-morrow morning at nine o'clock." And we counted from nine o'clock in the morning until twenty minutes of seven at night without any official of the State being in the office; and when we found a mistake of approximately 13,000 votes in Essex County, without any official capacity on the part of anybody, somebody did send a message of some kind to

Arthur D. Hill of Boston, asking him to return his certificate of election unopened. Without the Governor's Council sitting, without the Secretary's office being notified by any State official, they did notify him to return his certificate of election, and then the fourth tabulation took place. Mr. Choate was declared elected, Patrick H. Jennings and Mr. Hill declared not elected.

In the tabulation, Mr. President, we found erasures on practically every delegate at large, the 32 included, or appearances of erasures. And we want to know, or we should like to know or be enlightened, as to what the Election Committee could find out by going over the same tabulation sheets that the four counters had gone over, when appearances of erasures had taken place, according to their own words.

We found in the city of Waltham that erasures took place against the name of Adams.

We again found in the town of Winchester that erasures appeared beside the name of George W. Anderson.

We again found in the city of Lawrence pencil marks and the figures changed against the name of George W. Coleman.

We found in Fitchburg, in the case of Apsey, Barton, Buie, Choate, Donovan, Moriarty, Storey, Jennings, figures changed, or appearances of figures changed, on the tabulation sheets.

We found in the town of Blackstone erasures against the names of Adams and Choate.

We found in the town of Clinton, again, erasures against the name of Anderson.

We found in the town of Holden erasures against the name of Adams.

We found in the town of Mendon erasures against the names of Adams and Anderson.

We found in the town of Amherst erasures against the names of Walker, Walsh and Whipple.

We found in the town of Orange erasures against my own name.

We found in the town of Hinsdale erasures beside the name of George W. Anderson, in Hamilton against the President of this Convention, John L. Bates, and in the town of Ipswich against Adams.

The testimony of Mr. Boynton, the Deputy Secretary of the Commonwealth, before the committee, was that the Governor's Council and the Governor's office were trying to make the goat out of the Secretary of the Commonwealth's office and trying to throw the responsibility over on the Secretary of the Commonwealth for the mistakes made. Mr. Boynton said that the reason that they did not find the mistakes was that all they went through was the total, and where the mistake was made was in the totaling. They only counted the total.

I want to say that the committee has made a precedent. The first case that they took up in this Convention was on the resolution presented here in regard to the Charlestown case of Sullivan and Mullen. The petitioner asked that both men be allowed a seat in this Convention with half a vote. Neither one of those contestants asked the committee to retabulate the vote. But the committee went out, and after a recount being held by the election commissioners of the city of Boston, and the election commissioners of the city of Boston declaring it was a tie vote, this Election Committee, appointed by this Conven-

tion, without the request of either the men or their representatives, went out and counted the votes, broke the tie, and declared that Mr. Sullivan was legally elected as a delegate.

I want to say that that is all that we ask, that the votes be counted, and if Mr. Choate has got the most votes Mr. Choate should be here. I happen to be a delegate who may be as near to being counted out as anybody else. I stand No. 15 among the delegates at large, and if I have not got enough votes in the recount I do not belong here. In having the votes recounted I am taking chances of being counted out, but I say that the citizens of this Commonwealth deserve protection from the men whom they elect. One of the committee has reported that there was not a sufficient number of officials there to even break the seal.

Mr. President, I hold in my hand a copy of the laws relative to primaries, caucuses and elections, Acts of 1913, Chapter 835, Section 312:

> The Secretary of the Commonwealth shall lay before the Governor and Council the copies of the records of votes cast with their seals unbroken. The Governor with at least five Councillors shall, as soon as may be, open and examine all such copies and determine who are elected to the several offices. Upon such determination, the Secretary, upon application, shall furnish to newspapers an abstract of the records of the votes examined.

I want to say to you that the committee asked the Governor's Council to come before the committee and only one member of the Governor's Council recognized that request. I understand that that member of the Governor's Council told that the members of the Governor's Council violated the election laws of this State by not having the Governor present when the seals of the votes of this State were opened; and I believe if any man ever had the right to a recount of the ballots of his election it is Mr. Jennings, and that every delegate at large should be with this proposition to show that the ballot of this Commonwealth is a sacred document. And I am going to say that after to-day, when this is made public, — and I hope that it does get a lot of publicity, — that the voters of this State will not believe that the vote is a sacred vote if this Convention does not go on record to count the votes of the delegates at large.

Mr. President, delegates of this Convention, we have complied with every law. Before the thirty days expired we notified every city and town of this Commonwealth according to law to hold the ballots, to allow this Convention to take the ballots in here, which they have power to do. Now I ask you men, — not as the chairman or the secretary of the committee has said, that it is a labor movement, but we come here with clean hands as citizens, not as any divided people in this State, but purely and simply as citizens of this Commonwealth, as we got our nomination papers as delegates as citizens and not as of any class, — and I ask you men to give Mr. Patrick H. Jennings, as a citizen of this Commonwealth, and Mr. Choate, who does not want to be a delegate to this Convention, if I judge him right, and have any insinuations that there was anything wrong with the ballot in this Commonwealth, this recount. I will say that I will be one of the first men, if Mr. Choate or any other delegate has got votes enough to be in here, to say that this is his place, but I believe that we have a right to be shown.

Now, I want to say that, going before the committee, I was criticized most severely for being suspicious, and I remember that I

answered this question of one of the committee, Yes, that I was getting so suspicious from finding out the things that I did find out that when I went home late at nights I used to guard my own shadow. And I was criticized for that. But I want to say to you men that when the committee went in to tabulate the sheets they got suspicious too; and the first thing that they tried to find out, when they found that blotted sheet from the town of Cummington, — their first thing to do was to go out and find if it was done by the four members who went in and found the mistake. Now I want to say to you and the committee: Have I not got just as much right to be suspicious as a member of the committee?

In conclusion, gentlemen, I want to say this: That both the Deputy Secretary of the Commonwealth and the secretary of the executive say that the mistake would never have been found out if it was not for the four citizens going in and retabulating the vote. That is testimony that came out before the committee. So I say to you men, I realize that the word "expense" is going to be used now after I get through. They are going to say that it will cost a lot of money. My answer is no matter how much money it costs, that it will be a cheap venture to show the citizens of this Commonwealth that the ballot is right and that men who run for public office will receive all of the votes tabulated in their favor. I thank you for the indulgence.

Mr. Choate of Southborough: I remember in the early days of the sitting of this Convention an honorable gentleman, a delegate from Waltham, advised the Convention that there were no Choates in the body. Whether he so advised them by way of congratulation or lamentation I was not then aware, — I think and I hope and I suspect by way of congratulation. I have for the last six weeks enjoyed an experience which I think is unique in the experience of any member of such a body as this. I have been "in again and out again" every day, I think, for the full six weeks of the sitting of this body. And I have no right to share that exhilarating experience alone, — there are thirty-two other gentlemen who are as much entitled to that excitement as I, and I for one, am heartily in favor of their having the opportunity. But seriously, Mr. President, a delegate to this Convention should be like Cæsar's wife. And if there is, as there seems to be, a well founded and well settled and thoroughly believed doubt as to the seat of any member here, surely this Convention ought to vote as one man to ascertain the truth about those facts and settle it for all time. [Applause.]

Mr. Dean: The only trouble with the gentleman's proposition is that there is no doubt. The situation is this: The gentleman from Boston, speaking a little while ago, said that we set a precedent when we counted the ballots in the case of Sullivan *v.* Mullen (Document No. 133). We did that, Mr. Chairman, because there there was a tie vote and there were six ballots in dispute. Those are the cases where you go to the ballots themselves, and you see what the intent of the voter is by what he puts on his ballot. Seeing how he marked his ballot you then determine what the will of the majority is. But there is absolutely no evidence in this case that requires the examination of any ballots whatever. The whole trouble came with the Executive Council, through a mistake in tabulation. I should like to correct the gentleman from Boston in regard to that by telling him we did not

take a copy of the Council's tally sheets. We went to the records of the 354 cities and towns of Massachusetts; we took those records and we retabulated the votes for the thirty-two delegates at large. We did everything in reason that we could to make clear and sure the result, and we were satisfied, — it was perfectly clear, — Mr. Choate of Southborough had 104,152 votes and he had defeated Mr. Jennings by 1,640 votes.

Mr. President, this last suggestion to my mind is a pretty serious matter. On mere suspicion and conjecture, on a fishing expedition, with the hope that we may count a few more votes for one candidate, are we going to recount the ballots of the entire Commonwealth of Massachusetts? You speak of the vote of the little town of Cummington, but the largest vote of that town, 20 was given to Mr. Adams, and Mr. Jennings got no votes there. What does that mean? Is that evidence upon which to go ahead and recount the entire vote of the State? These alterations, these erasures on the tally sheets, — and there were erasures on the tally sheets, the sheets that the clerks made up, — amount to very little. The people who actually gained are men like Mr. Cummings of Fall River or Mr. Clifford of New Bedford. Those are the men who have material changes. And the greatest change made in the vote of any of those men would not be enough to offset the lead which Mr. Choate had over Mr. Jennings. I cannot believe under such circumstances that this Convention is going to reëxamine the ballots. That is a reflection upon every precinct officer in all the towns and all the cities of Massachusetts, as if there was really something crooked, and there has not been the slightest evidence before our committee of anything of that nature whatever.

Mr. Dennis D. Driscoll of Boston: I trust that the delegates to this Constitutional Convention will not follow the action of some Legislatures and lessen the confidence of the people of this Commonwealth in their attempt to amend the Constitution. When I first came to this Convention as a delegate one of the prominent men of this Commonwealth suggested a very small error that should be corrected, and the feeling of the delegates to this Convention as to that small error was such that there was not any correction made. Now, the people of this Commonwealth feel that there is not only an error, but that there are other mistakes, — that the committee do not deny, — and on the statement of a delegate to this Convention there are violations of the election law of this Commonwealth that have been made. Do you blame us for being called radicalists?

When men come in as delegates, as citizens, representing the people of this Commonwealth and in behalf of labor, is it because it is a labor man who asks for a recount that the consideration of the interest of the Constitution of the people is not worthy of granting? I trust that the delegates to this Convention will prove to the people of this Commonwealth, and it is bold for me to say it, that if the Governor's Council does not live up to the laws relating to the tabulation of the voting in this Commonwealth they will see that they are lived up to, and if it does not do its work they will encourage other men to go on record in favor of abolishing such an organization as the Executive Council or the Governor's Council of Massachusetts. Is it true that all those mistakes were made on the tabulation? Is it true that all lead pencil changes and blots of ink in regard to figures have been

found? Does any delegate to this Convention deny this statement: That the committee who first handled the tabulation of these ballots sent a notice to Arthur D. Hill that he was elected a delegate to this Convention? Does the committee deny that? And after the committee of citizens who were there looking over the ballots found out that the committee of the Governor's Council had made a mistake of thousands of votes, who assumed the authority, without a meeting of the Governor's Council, to send a notice to Mr. Hill that he was not elected as a delegate to this Convention? I want to say to all the delegates to this Convention that if they showed the same manhood and the same feeling as the delegate in the third division (Mr. Choate) did in talking on this subject, they would give the people of the Commonwealth more confidence in their representatives who are delegates to the Constitutional Convention. We are not afraid to spend money for justice. We believe in freedom. The poor and rich should be equal. And then when it comes to this Convention, representing the people, the delegates shall not have it said by any one on a public platform in their city or town that they were afraid to spend money when there was doubt of the people as to an act that was proved, in order to prove to the people of this Commonwealth, when all is done, that the representatives of the people who were considering the question of the Constitution took such action as to give to the people who were not delegates here the assurance that every man would get justice by law and by the action of the delegates to this Convention. I trust that the delegates to this Convention will accept the minority report of the committee and let the majority members of that committee go back and count the ballots, and so let every delegate go home when the Convention is over and say that every man who sat here represented the people, or the interest of the people, and in behalf of the people were not afraid of any issue in open voting. That is the reason that I would rather go on record in favor of recounting the votes, and I trust the delegates to this Convention will do likewise. Give the opportunity that the ballots be counted, and where errors were made see that they are corrected promptly, openly and aboveboard. Give us more encouragement in the future. Then, when our State officials are elected by a small vote of the Commonwealth, we will not be trying to get a recount. We have a tabulation here. We have lost confidence in it. Now give us confidence by giving us a recounting of the votes for the delegates who are here, and their friends who are outside will be satisfied. I express my feeling openly and aboveboard in the interest of fair play for the citizens of this Commonwealth.

Mr. O'Connell of Boston: I should like to inquire from Mr. Moriarty in reference to the erasures that are spoken of in those reports. Was there any indication that those erasures were made by those who tabulated, or were they made before they came to the tabulators? It seems to me it is very important that this Convention should know of this feature definitely. And further, I should like to know how many erasures were noticed, and what was their nature. Were they in the tabulation originally, or were they made at a later time? If Mr. Moriarty or some member of the committee can enlighten me on that I shall feel better able to act on this question.

Mr. Dean: I think I can answer the gentleman's question. The

figures now appearing in the tabulation appear to be in the same handwriting as the figures that were erased or crossed out. Let me give you a few of the changes to show their nature. In the vote of the county of Hampden 6,478 are given to Mr. Anderson, and then that is crossed out, a line is put through it, and the same hand writes above it "6,439." When you come to the vote of Mr. Clifford of New Bedford in Barnstable County, he was first given 846 votes and in the same handwriting that was crossed out and he was given 802 votes. Mr. Cummings in Essex County lost 7 votes the same way, from 19,633 votes to 19,626. And I might go on in the same way. It was all a case of where a figure was corrected by the person tabulating, and these corrections are on the tabulating sheets, and not upon the original source of information, the returns made by the cities and towns, to which we go back for our own authority in making our own tabulation.

The gentleman from Boston in the first division (Mr. Dennis D. Driscoll) emphasizes labor's interest in this election. He should remember that while there are many classes in the Commonwealth, no one class shall rule.

Mr. O'CONNELL: The gentleman seems to have told us about corrections. My inquiry was in reference to erasures. The term erasure has been used here, and I believe it is in both the majority and the minority report. I want to know about the nature of the erasures that took place in these tabulations.

Mr. TIMOTHY J. DRISCOLL: In the returns from the cities and towns there were numerous erasures. Some of the returns were in handwriting and others were typewritten, and there were numerous mistakes in the writing of them. It seems as if erasures were made and they were written over. That is for the information of the previous speaker.

Mr. MORIARTY: I will say that in the places that we found erasures or the appearance of erasures it was our opinion that we could not tell what was there before the erasure took place. There were indications on the tabulation sheets that erasures did take place, but what was there before the erasures took place in counting the ballots will be the only thing that will tell whether the figures are true or not.

Mr. ANDERSON of Brookline: I should like to inquire whether there is any evidence at all that erasures or changes were made which affected the result. If I understood correctly the claim made by some one of the committee, the tabulation disclosed the errors. If that is so, then there is no occasion to recount the ballots. If, however, there is evidence that there were changes made in the votes which might change the result, then a different case is presented. I do not yet learn what the facts are claimed to be.

Mr. DEAN: In answer to the gentleman's question I should like to say that there are no corrections or changes that would affect the actual result. Any changes that appear on these sheets will not affect the vote cast for Mr. Choate or Mr. Jennings in any material respect; that is, they may affect the vote of one candidate by two votes, but there is nothing to show that the votes cast for Mr. Choate or Mr. Jennings would in any way be affected by these erasures or these changes. There are a few erasures. Apparently some one has taken an ink scratcher, and instead of crossing a line through and making a correction has scratched out a figure and put another one in its place.

Mr. Moriarty: Mr. Chairman, they say that there is not any difference. According to the newspaper reports Mr. Choate received in the city of Worcester 4,109 votes, according to the tabulation sheets he received 4,980 votes, an increase of 871 votes. Mr. Hill received 3,528 votes according to the newspaper returns, and according to the tabulation he received 3,498 votes, losing votes in Worcester. Mr. Jennings in Worcester from the newspaper reports received 5,384, and on the tabulation sheets received 4,384, a drop of 1,000 votes. Just in errors alone Mr. Choate's gain of 871, Mr. Jennings' drop of 1,000, would change the situation. I will say that we counted the last four men. Myself in Worcester received according to the newspaper reports 48,056; on the tabulation sheets I lost 200 votes. Mr. Hill, Mr. Jennings and myself lost votes; Mr. Choate gained, — the only one on there who did gain. In the town of Brookline Mr. Choate was given 204 votes by the newspaper reports. The tabulation sheets give him two thousand and some odd votes. There is a gain of 2,800 votes for Mr. Choate and a loss of 1,800 for Mr. Jennings. In the town of Winthrop by the newspaper reports I lost 500 votes. We have always taken the Transcript and the Globe reports as being pretty nearly accurate, but this is the first time in the history of an election in this State when every town in this State did not have its returns tabulated in the papers. There were a number of towns for which there was not any tabulating by which we could verify the reports. I think that you are not losing anything in ordering a recount, and for the sixteen men elected I feel that those men would be the ones that would like to have the votes counted over again.

Mr. Horgan of Boston: From the statements which have been made here to-day I understand that this is the situation: That the tabulation sheets to which the gentleman from Boston who has just taken his seat refers are the tabulation sheets which were in possession of the Governor and Council; that he made a comparison of those sheets with the newspaper returns, that the committee did the same thing; but that, in addition to doing that, the committee went to the original sources of information, the various cities and towns of the Commonwealth, to verify the tabulations which appeared upon the sheets that were in possession of the Governor's Council. I should like to know, Mr. President, if that is correct. If it is correct I should also like to have this further question answered: Was there any information presented either to the committee which represented the interests of Mr. Jennings or to the committee of this Convention showing any fraud or collusion or error on the part of any election official of any of the cities and towns in this Commonwealth, and if so what was the nature of the fraud, the collusion, or the error?

Mr. Dean: I will answer the second question first, in regard to fraud or collusion. There was no evidence of any fraud or collusion, or the slightest evidence of anything wrong in that respect. Now in regard to what the committee did. We took the returns of the 354 cities and towns and we tabulated those returns, — examined the returns and tabulated them, — then compared our result with the tabulation of the Governor and Council, and it agreed exactly with the final tabulation of that body.

Mr. Horgan: I should like to ask through you, Mr. President, from the gentleman from Fall River, if the tabulation sheets which they

used themselves were the same tabulation sheets which were used by the Governor's Council.

Mr. DEAN: I hold in my hand the tabulation sheets, all in my own handwriting. These figures were compiled by myself. However, let me say this, that in regard to the tabulation sheets from Barnstable, we will say for illustration, where the returns of the different towns came in we had the figures read and we checked them on one of the tabulation sheets that we found there, but all totals we made ourselves. I wonder if that is clear.

Mr. HORGAN: I think it is clear as far as the gentleman has gone, but what I am anxious to ascertain from the committee is this information: Did the committee in addition to the tabulation sheets which were placed at its disposal by the Governor's Council, — which I assume were the original sheets submitted to the Governor's Council in order that they might ascertain the votes, — go behind those sheets when it discovered the various errors made by the Governor's Council and endeavor to obtain from the direct source, namely, the cities and towns, a correct verification of the figures of those respective cities and towns?

Mr. DEAN: Yes, we did. We went behind the tabulation sheets and took the returns of the cities and towns, and made our own record.

Mr. MORIARTY: I should like to ask how many cities and towns of the 354 he got that verification from.

Mr. DEAN: We examined the figures from all the 354 cities and towns.

Mr. MORIARTY: That is not my question. I understood the secretary of the committee to say that after going over the tabulation sheets filed by the Governor's Council he went back farther than that and communicated with the different cities and towns to see if the figures on the tabulation sheets were accurate. I should like to find out how many cities and towns he got word from that the figures on the tabulation sheets were accurate.

Mr. DEAN: What we did was this: We took the returns which were filed in the Secretary of the Commonwealth's office from the cities and towns, each in a separate envelope, and we went through those returns, looking, and anxiously looking, to see if we could see anything on the return itself which would show that any error was committed in the particular city or town; and we found nothing. The gentleman from Sutton (Mr. Ray) did a great deal of that work; I would like to hear from him.

Mr. HART of Cambridge: Is not the Convention getting away from the main issue here, which is, simply, which of the two men is elected? That is the thing that we are most interested in. A machinery for elections is provided, which has gone through its various stages, and under ordinary circumstances and in an ordinary body that result might be accepted. The difficulty is of course that that fossilized monument of the opinions of mankind a hundred and twenty-five years ago, the Governor's Council, which has very little to do, did that little very badly. They are the people who have tangled us up; and it is impossible not to suspect sharp practice somewhere, when a man is suddenly discovered to push out the sixteenth man; and when it is discovered that he did not push him out, it is found that another man pushed him out. I myself do not believe that there was any

fraud or substitution; but I do believe that the community at large, the people of Massachusetts, feel that there is something wrong in that count, and that that feeling can be removed by this Convention by following the desires of the two persons most concerned. The sitting member and the contesting member, both of them have asked this Convention to do what is unusual. But we are an unusual body. This Convention is a law unto itself in that matter. It did not require even the authority of the Legislature to examine the credentials and the votes of its own members. I therefore shall vote for a proposition which, at whatever cost of time and money is necessary, will enable this Convention to satisfy its constituents and the Commonwealth that it has removed any doubts or questions. The finding of such a committee will be accepted by both contestants, by all the members of the Convention, and by the public at large, as final, and there never will be any more difficulty.

Mr. GEORGE of Haverhill: Perhaps it would be well to explain the difference between the tabulation sheets and the returns from the various cities and towns. As a matter of fact, in regard to any of those returns that have been mentioned here as having erasures, those erasures were made before they were executed by the town officials so that every return that came to the Secretary of the Commonwealth's office was sealed, and opened in the presence of the Governor and Council. These reports were sworn to, and there is no question or doubt as to the reliability of the result upon the returns from the various cities and towns.

The committee went back to those returns, they carefully compared those returns, and then they retabulated the entire returns from the several counties, including the several cities and towns; and, as the clerk of the committee has said, we found, independently of the Governor's Council, that the returns as tabulated were correct.

Now, it is said that because the Governor's Council bungled these returns it created a suspicion. It has not created suspicion enough in the mind of the gentleman from Cambridge to raise any doubt in his mind; he thinks it is perfectly straight. The gentleman from Boston says it has created a suspicion in his mind. Now, that is the difference between the two. A suspicion is created in the mind of the gentleman because the Governor and Council bungled their part of the work, so he says that the returning board down in Barnstable and the returning board up in Williamstown, and in the three hundred and more other cities and towns of the Commonwealth, must have made an incorrect return.

I appreciate the situation that the gentleman from Southborough is in, and I appreciate the fact that the gentleman from Boston has told us the real purpose of this discussion when he said: "I hope it will be given a wide publicity." Now, I hope the newspapers will take due notice of that and give it wide publicity, because that is what this discussion is for. As a matter of fact, there is no question in regard to the count. There is no reason to believe, simply because there is an error committed over in the Governor's office or the Councillors' office, that the officials in all the cities and towns of this Commonwealth committed errors. It seems to me that that suspicion is not well founded.

Now, the committee gave this case a great deal of attention, and

they thought it was not necessary to send for all the ballots, all over the Commonwealth, and employ a large number of people to go over these ballots and count them all over again because we have not confidence in the men who have performed that service for the several cities and towns of Massachusetts. I think that suspicion is rather overdrawn, and I think it would be well if the gentlemen who have raised that suspicion should do their part toward allaying it and tell people that we have gone through this whole matter in a practical way. One of the men who appeared at the hearing said that the stream appears very muddy, and he said: "What we want to do is to go back where the water is clear." He said the clear water was back at the source. So we went back to find clear water, and we found clear water when we inspected the returns from the several cities and towns. So instead of going back to the source of the stream and using two months' time or six weeks' time, spending thousands of dollars, simply because some one was suspicious, we went where we found the waters very, very clear. We took those sworn returns from the several cities and towns and tabulated them, and there could be no question in regard to the result. There is just as much question as to the election of the other 319 members as there is to this one, and if we are going to have exact confidence we ought to go back and count all the votes for all the delegates; if we should count all those votes, and then find some people suspicious, why, we would have to perform that work over and over again, as they have asked us to do in this case. It seems to me this is a practical question, and you will notice that all that is said here is directed at the tabulation. I am not here to defend the Governor and Council. I am not here to defend the Governor for letting a partisan committee have the returns of the various cities and towns, and to remove them to another room with no custodian, when there were rights of 32 or 31 other candidates involved. That was done, and that opened another suspicion. But I think that these four men were honest, and I think that the election officers throughout this Commonwealth were honest. It seems to me a wholly unnecessary thing to drag in all these ballots, all over this Commonwealth, and spend our time counting ballots, when there is no question about the original count, no hope is offered or suggested that there will be any change, and for no other reason than to remove a suspicion that some people think exists in Massachusetts. I travel on the railroad and I meet all classes of people, and I have this to say: There is not a human being who has said a word to me about this question outside of this Convention; and yet I should think, to hear these gentlemen speak, that there was tremendous feeling all over the State about this so-called suspicion. I am ready to vote to accept the report of the committee and end the whole matter.

Mr. Broderick of Waltham: Did the committee on Elections communicate with the officials of any of the various cities and towns to learn the reasons for these erasures, alterations and corrections in the returns of the elections from these cities and towns, which have been referred to in the course of this debate?

Mr. George: I think it is fair to assume if the Secretary of the Commonwealth or any other official accepts an official return, even though it bear erasures, if it is signed and sworn to by the proper officials, he understands that it was not signed until those corrections

or erasures had been made. It is a very easy thing to make an error in calling off the returns from all these cities and towns. We even did it ourselves. You cannot help getting a figure wrong sometimes. But we corrected it; and these returns were not signed and executed by the officials, and sworn to, until they were corrected. So we took it for granted that they were legal documents in every respect.

On the amendment offered by Mr. Timothy J. Driscoll of Boston, to substitute for the majority report the minority report of the committee, the roll was called and the motion to substitute was negatived, by a vote of 106 to 164. The report of the committee was then accepted.

DEBATES

DEBATES ON PROPOSALS TO AMEND THE CONSTITUTION.

I.

The Preamble of the Constitution of Massachusetts is as follows:

PREAMBLE.

The end of the institution, maintenance, and administration of government, is to secure the existence of the body politic, to protect it, and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights, and the blessings of life: and whenever these great objects are not obtained the people have a right to alter the government, and to take measures necessary for their safety, prosperity, and happiness.

The body politic is formed by a voluntary association of individuals: it is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a Constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them; that every man may, at all times, find his security in them.

We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the great Legislator of the universe, in affording us, in the course of His providence, an opportunity, deliberately and peaceably, without fraud, violence, or surprise, of entering into an original, explicit, and solemn compact with each other; and of forming a new Constitution of civil government, for ourselves and posterity; and devoutly imploring His direction in so interesting a design, do agree upon, ordain, and establish, the following *Declaration of Rights, and Frame of Government*, as the CONSTITUTION OF THE COMMONWEALTH OF MASSACHUSETTS.

Mr. Ralph L. Theller of New Bedford presented a resolution providing that the above Preamble be stricken out; and that the following be substituted: —

We, the people of Massachusetts, grateful for the heritage of liberty which has come down to us, in order to secure forever the benefits of that liberty to ourselves, to our posterity, and to all the inhabitants of our Commonwealth, in order to establish justice, to insure peace and tranquillity, and to promote the general welfare, do ordain and establish the following as the Constitution of the Commonwealth of Massachusetts.

The Committee on Bill of Rights reported that the Resolution (Document No. 21) ought NOT to pass, and it was considered by the Convention, sitting as a Committee of the Whole, July 19, 1917, and was rejected the same day.

THE DEBATE.

Mr. THELLER of New Bedford: The docket does not show the proposer of the motion, so I had better acknowledge it now. I should like to call the attention of the Committee of the Whole to document No. 21. It contains only seven lines and can easily be read at the present time. I have offered this amendment of the preamble after examining the preambles of the Constitutions of very many of the States of the Union and the preambles of the Constitutions of the

various continental countries, and so far as my research went I found no Constitution with a preamble as long as that of Massachusetts at the present time. I think that improvement in the direction of brevity ought to be considered while we are revising this Constitution, and I have offered a very simple amendment. The Constitution of New York which was not approved by the people and the present Constitution contain for a preamble only a single line. I confess, and probably many of you will feel as I did when I first read over the preamble of this Constitution of 1780, there is no question in anyone's mind who takes out the little notebook and reads the preamble that it is couched in language which is sonorous and elegant. But I should like to state also that if you read it two or three times you will find in it the old phraseology of the old law and a great many expressions which have been discarded and some very antiquated political science. That is to say, the so-called social compact, I think I am correct in saying, has been almost entirely discarded by the thinkers in political science. But I am not offering any objection to that at all. The objection I offer is that the preamble or the Constitution itself should contain in so many words any political or economic theory. Our own Mr. Justice Holmes, in the New York Bake Shop Case, in his dissenting opinion, said in so many words: "But the Constitution should not contain any theory, whether of *laissez faire* or paternalism."

My point, then, is entirely this: That brevity and the reform of language and the exclusion of any particular theory mentioned in such terms as is there mentioned, would really reframe the preamble so that it would be simply an expression of the obligation of the people of the State with regard to that particular Constitution which they are asked to adopt.

There is one further thing I should like to say before closing, and that is this: This resolution for a new preamble was referred to the committee on Bill of Rights. Now the Bill of Rights Committee, of course, has dealt with the Bill of Rights; it dealt with substantive rights. There is no particular right, personal or otherwise, in the preamble, so that it really was not for the committee on Bill of Rights to discuss it. It seems to me that this committee should refer this motion for amendment to the committee on Form and Phraseology, more particularly for this reason: There are other matters coming up before the Committee of the Whole and if they are accepted and referred to and accepted by the Convention, then the Constitution will be revised both in language and in matter, and if you accept the report of this committee now and the Convention acts on your report you will be in the position of having an antiquated preamble and a modernized Constitution. For that reason it seems to me that this report of the committee on Bill of Rights should not be accepted but that when this Committee of the Whole rises to report it should refer this resolution for an amendment of the preamble to the committee on Form and Phraseology.

Mr. MERRILL of Gloucester: While, strictly speaking, the committee on Bill of Rights had no jurisdiction of the preamble of the Constitution, nevertheless this resolution was referred to it by the President of this Convention and they took jurisdiction. The gentleman from New Bedford appeared before them and explained at length his idea in changing the preamble of the Constitution. Your com-

mittee, however, after considering the matter thoroughly, were of the unanimous opinion that while many changes were necessary and desirable in our Constitution, there seemed to be no reason why the preamble of the oldest written Constitution in existence, written by a man who was famous in Massachusetts and throughout the United States, John Adams, — why that should be changed by cutting out a single phrase. And as I said, your committee therefore were of the unanimous opinion that this resolution ought not to pass.

II.

APPROPRIATIONS FOR SECTARIAN AND OTHER INSTITUTIONS.

Article XVIII of the Amendments of the Constitution reads as follows: —

All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is to be expended; and such moneys shall never be appropriated to any religious sect for the maintenance exclusively of its own schools.

[Article III of Part the First provided for the election of Protestant ministers and for taxation for their support, a man's taxes to be applied to the support of a minister of his own denomination if there were any whose church he regularly attended, otherwise to the support of the dominant sect of the town.
In 1836 Amendment XI was substituted. Amendment XVIII was adopted in 1855.]

The following Article of Amendment was recommended by the committee on Bill of Rights: —

Article XVIII. No law shall be passed prohibiting the free exercise of religion; and all moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is expended; and no grant, appropriation or use of public money, or property, shall be made or authorized for the purpose of founding, maintaining or aiding any school or institution of learning wherein any religious doctrine is taught, or any other school, or any college, infirmary, hospital, institution or undertaking which is not conducted according to law, under the exclusive control, order and superintendence of public officers and agents authorized by the Legislature; except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts, for public libraries open to the public in any city or town; and no such grant, appropriation or use shall ever be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society; [A] but nothing herein contained shall be construed as limiting the power of the Legislature to authorize the performance through contract of the necessary functions of government respecting public health, or the care and maintenance of such persons as may, in whole or in part, require support at the public charge.

Mr. Frederick L. Anderson of Newton dissented from the recommendation of the committee on Bill of Rights and, in a minority report, recommended the following: —

Article XVIII. No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof, nor shall the State, county, city, town or any civil division use its property, or credit, or any money raised by taxation or otherwise, or authorize any of them to be used, for the purpose of founding, maintaining or aiding by appropriation or in any other manner any church, religious denomination or religious society, or any institution, society, undertaking, school or higher institu-

tion of learning which is wholly or in part under the control of a religious body or a religious corporation, whether said complete or partial control be explicitly expressed in the charter, by-laws, or other such writing by some provision that all or any of the governing or managing bodies must or may be members of a specified religious body or society or must or may be appointed by a specified religious body, corporation or authority, or whether, if the control be not thus explicitly expressed, it be due to the fact that a majority of the governing or managing bodies are members of one religious body or society or are appointed by one religious body, corporation or authority. Nor shall the State, county, city, town or any civil division use its property or credit or any money raised by taxation or otherwise or authorize any of them to be used, for the purpose of founding, maintaining or aiding by appropriation or in any other manner any school or higher institution of learning, whether under public or private control, in which the distinctive tenets of any religious body are taught or propagated: *provided*, that nothing contained in this section shall be held to deprive any inmate of the publicly controlled charitable, reformatory or penal institutions of the opportunity of religious exercises of his own faith, but no inmate shall ever be compelled to utilize religious opportunities of any kind against his will, or, if a minor, without the consent of his parents or guardians.

SCHEDULE. This amendment is to be described on the ballot by the words "Prohibiting Sectarian Appropriations."

Mr. Frederick L. Anderson of Newton moved that the committee's resolution be amended as follows: —

By striking out all after the word "society", at [A], and inserting in place thereof the following: "but nothing herein contained shall be construed to prevent the State or any county, city or town, from paying not more than the ordinary rates for services previously rendered by a privately controlled hospital or infirmary."

Subsequently, Mr. Anderson withdrew his substitute resolution and also his amendment of the measure reported by the committee on Bill of Rights.

Mr. Edwin U. Curtis of Boston, chairman of the committee on Bill of Rights, then moved that the committee's resolution be amended by substituting a new draft, which, after technical changes by the committee on Form and Phraseology at a later date, read as follows: —

ARTICLE XVIII. SECTION 1. No law shall be passed prohibiting the free exercise of religion.

SECTION 2. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the city or town in which the money is expended [A] and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the Commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning [B] wherein any denominational doctrine is inculcated, or any other school, [C] college, [D] infirmary, hospital, institution, or educational, [E] charitable or religious undertaking which is not [F] under the exclusive control, order and superintendence of public officers or [G] agents authorized by the Commonwealth or Federal authority or both, except that appropriations may be made for [K] the maintenance and support of the Soldiers' Home in Massachusetts and for [H] libraries [I] open to the public in any city or town [J]; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society.

SECTION 3. Nothing herein contained shall be construed to prevent the Commonwealth, or any political division thereof, from paying to privately controlled [L] hospitals, infirmaries, or institutions for the deaf, dumb or blind not more than the ordinary and reasonable compensation for care or support actually rendered or furnished by such [M] hospitals, infirmaries or institutions to such persons as may be in whole or in part unable to support or care for themselves.

SECTION 4. Nothing herein contained shall be construed to deprive any inmate of a publicly controlled reformatory, penal or charitable institution of the oppor-

tunity of religious exercises therein of his own faith; and no inmate of such institution shall be compelled to attend religious services or receive religious instruction against his will, or, if a minor, without the consent of his parent or guardian.

Mr. Charles G. Washburn of Worcester moved that the new draft be amended by adding at the end thereof the following: —

The General Court may make appropriations for scholarships in technical and engineering schools in which State scholarships now exist.

This amendment was rejected.

Mr. Horace I. Bartlett of Newburyport moved that the new draft be amended by adding at the end thereof the following: —

But nothing herein contained shall prevent any city or town from expending money raised by taxation or otherwise, in the education of its school children in any school approved by the school-committee and not under ecclesiastical or sectarian control.

This amendment was rejected.

Mr. Frank P. Bennett of Saugus moved that the new draft be amended by striking out all after the word "expended", at [A].

This amendment was rejected.

Mr. Scott Adams of Springfield moved that the new draft be amended by inserting after the word "libraries", at [I], the words "and museums connected therewith."

This amendment was rejected.

Mr. Samuel W. George of Haverhill moved that the new draft be amended by substituting the following: —

As the public worship of God and instruction in piety, religion, and morality, promotes the happiness and prosperity of a people, therefore the several religious societies of this Commonwealth, whether corporate or unincorporate, shall ever have the right to establish and maintain houses for public worship, for the maintenance of religious instruction; and no law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof; and to avoid all possible discrimination no religious test or qualification shall ever be required of any person seeking public employment and no money shall ever be appropriated or used by the Commonwealth or any political division thereof for the support of any institution wherein the distinctive doctrines, creeds or tenets of any particular religion are taught, or for the support of any institution founded for or controlled by any religious sect, denomination or society.

This amendment was rejected.

Mr. Frank L. Boyden of Deerfield moved that the new draft be amended by adding at the end thereof the following: —

Section 5. But nothing herein contained shall be construed to prevent any town from raising and appropriating money for such academies in the Commonwealth wherein no denominational doctrine is inculcated as are open to the public in any town not maintaining a high school or specifically exempted therefrom.

This amendment was rejected.

Mr. James P. Richardson of Newton moved that the above amendment be amended by inserting after the word "academies", the words "now existing."

This amendment was rejected.

Mr. Horace I. Bartlett of Newburyport moved that the amendment moved by Mr. Boyden be amended by striking out the words proposed to be inserted, and inserting in place thereof the following: —

SECTION 5. But nothing herein contained shall prevent any city or town from expending money raised by taxation or otherwise, in the education of its school children in any school approved by the school-committee and not under ecclesiastical or sectarian control.

This amendment was rejected.

Mr. Paul R. Blackmur of Quincy moved that the new draft be amended as follows: —

By striking out the words "infirmary, hospital, institution, or", at [D].

This amendment was rejected.

The same gentleman moved that the new draft be amended as follows: —

By striking out the word "charitable", at [E]; by striking out the words "the maintenance and support of the Soldiers' Home in Massachusetts and for", at [K]; by striking out the words "hospitals, infirmaries, or", at [L]; and by striking out the words "hospitals, infirmaries or", at [M].

These amendments were withdrawn.

Mr. Charles G. Washburn of Worcester moved that the new draft be amended by adding at the end thereof the following. —

Nothing in this amendment shall in any way affect chapter 78 of the Acts and Resolves of 1911, being a Resolve in favor of the Massachusetts Institute of Technology, and chapter 87 of the Acts and Resolves of 1912, being a Resolve in favor of the Worcester Polytechnic Institute.

This amendment was withdrawn.

Mr. Lincoln Bryant of Milton moved that the new draft be amended by adding at the end thereof the following: —

Provided that nothing herein contained shall prevent the appropriation and payment to the Massachusetts Institute of Technology of the sums granted to it under chapter 78 of the Resolves of 1911 as amended, or to the appropriation and payment to the Worcester Polytechnic Institute of the sums granted to it under chapter 87 of the Resolves of 1912.

This amendment was withdrawn.

Mr. James M. Morton of Fall River moved that the new draft be amended by inserting after the word "town", at [J], the words ", and to carry out legal obligations, if any, already entered into".

This amendment was adopted.

Mr. Sanford Bates of Boston moved that the above amendment be amended by striking out the word "legal".

This amendment was withdrawn.

Mr. Lincoln Bryant of Milton moved that Mr. Morton's amendment be amended by striking out the words to be inserted and inserting in place thereof the following: ", and to carry out the provisions, as now defined, of Chapter 78 of the Resolves of 1911 and of Chapter 87 of the Resolves of 1912."

This amendment was rejected.

Mr. Martin M. Lomasney of Boston moved that the new draft be amended by inserting before the word "agents", at [G], the word "public".

This amendment was adopted.

Mr. Frederick L. Anderson of Newton moved that the new draft be amended as follows: —

By inserting after the word "learning", at [B], the words ", whether under public control or otherwise,"; by inserting after the word "school,", at [C], the words "or any"; and by inserting after the word "not", at [F], the words "publicly owned and".

These amendments were adopted.

Mr. Edwin U. Curtis of Boston moved that the new draft be amended by striking out, at [H], the words "libraries open to the public", and inserting in place thereof the words "free public libraries".

This amendment was adopted.

The committee on Form and Phraseology further recommended that the new draft be amended so as to read as follows: —

ARTICLE XLV. SECTION 1. No law shall be passed prohibiting the free exercise of religion.

SECTION 2. No grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the Commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning wherein any denominational doctrine is inculcated, or any other school, college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not under the exclusive control, order and superintendence of public officers or agents authorized by the Commonwealth or Federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society.

SECTION 3. Nothing herein contained shall be construed to prevent the Commonwealth, or any political division thereof, from paying to privately controlled hospitals, infirmaries, or institutions for the deaf, dumb or blind not more than the ordinary and reasonable compensation for care or support actually rendered or furnished by such hospitals, infirmaries or institutions to such persons as may be in whole or in part unable to support or care for themselves.

SECTION 4. Nothing herein contained shall be construed to deprive any inmate of a publicly controlled reformatory, penal or charitable institution of the opportunity of religious exercises therein of his own faith; and no inmate of such institution shall be compelled to attend religious services or receive religious instruction against his will, or, if a minor, without the consent of his parent or guardian.

[In explanation of its proposed amendment changing the number of the Article of Amendment from "XVIII" to "XLV" the committee on Form and Phraseology stated that its "adoption presupposes that Article XVIII of the Amendments to the Constitution is to be allowed to stand in its present form, while the proposed amendment under consideration is to be supplemental thereto. In that case no reference should be made to Article XVIII, and no part of its language need be repeated in the new amendment."]

This amendment was rejected.

Mr. Samuel L. Powers of Newton moved that the new draft be amended by inserting after the word "expended", at [N], the words "or of such State authorities as the Legislature may direct".

This amendment was rejected.

Mr. Horace I. Bartlett of Newburyport moved that the new draft be amended by substituting the following: —

No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof, nor shall the State, county, city, town, village or other civil

division use its property or credit or any money raised by taxation or otherwise, or authorize any of them to be used for the purpose of founding, maintaining, or aiding by appropriation, payment for services, expenses, or in any other manner, any church, religious denomination or religious society, or any institution, school, society or undertaking which is wholly or in part under sectarian or ecclesiastical control.

This amendment was rejected.

Mr. Frederick L. Anderson of Newton moved that the new draft be amended by adding the following new section: —

SECTION 5. This amendment shall not take effect until the October first next succeeding its ratification and adoption by the people.

This amendment was adopted.

The proposed Amendment of the Constitution as amended and passed to be engrossed was as follows:

ARTICLE OF AMENDMENT.

ARTICLE XVIII. SECTION 1. No law shall be passed prohibiting the free exercise of religion.

SECTION 2. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the Commonwealth for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the town or city in which the money is expended; and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the Commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning, whether under public control or otherwise, wherein any denominational doctrine is inculcated, or any other school, or any college, infirmary, hospital, institution, or educational, charitable or religious undertaking which is not publicly owned and under the exclusive control, order and superintendence of public officers or public agents authorized by the Commonwealth or Federal authority or both, except that appropriations may be made for the maintenance and support of the Soldiers' Home in Massachusetts and for free public libraries in any city or town, and to carry out legal obligations, if any, already entered into; and no such grant, appropriation or use of public money or property or loan of public credit shall be made or authorized for the purpose of founding, maintaining or aiding any church, religious denomination or society.

SECTION 3. Nothing herein contained shall be construed to prevent the Commonwealth, or any political division thereof, from paying to privately controlled hospitals, infirmaries, or institutions for the deaf, dumb or blind not more than the ordinary and reasonable compensation for care or support actually rendered or furnished by such hospitals, infirmaries or institutions to such persons as may be in whole or in part unable to support or care for themselves.

SECTION 4. Nothing herein contained shall be construed to deprive any inmate of a publicly controlled reformatory, penal or charitable institution of the opportunity of religious exercises therein of his own faith; but no inmate of such institution shall be compelled to attend religious services or receive religious instruction against his will, or, if a minor, without the consent of his parent or guardian.

SECTION 5. This amendment shall not take effect until the October first next succeeding its ratification and adoption by the people.

The vote on passing the resolution to be engrossed was taken by a call of the yeas and nays. The result was: Yeas, 275; nays, 25.

The Convention voted, without division, Thursday, August 30, 1917, to submit the proposed amendment to the people.

The Convention, sitting as a Committee of the Whole, began the consideration of the measure as outlined above Thursday, July 19, 1917, but the discussion of the merits of the proposed change of the Constitution did not begin until the following day.

THE DEBATE.

Mr. ANDERSON of Newton: I rise, Mr. Chairman, not to move to substitute the minority report for the majority report at this time, though I may do so some time in the future after debate, but I rise at this time to offer a series of amendments to the resolution before us in order to make it what, it seems to me, would be proper and reasonable. Those who are familiar with legislative procedure might think that I was trying to load down a measure to which I am hostile with unfavorable amendments, but I wish those whose minds are confused with the legislative procedure to lay that notion entirely aside. I am trying to perfect this report of the committee, so that it may be most acceptable to me and to those who stand with me in this body. We may in the end be forced to go to the polls with this measure on the ballot. If that should happen, there are a good many of us who perhaps at the polls, in spite of a good many objections to it, might possibly vote for it and work for it, but we cannot vote for it or work for it as it stands; not for a minute. In fact, just as it stands here, we should be forced not only to vote against it in the Convention but also to work against it from the minute that the Convention placed it before the people. I am sure that if to those who wish nothing done on this subject, and those who favor sectarian appropriations in principle, and all the friends of the private institutions of the State, were added our powerful body, the Convention might just as well not pass any amendment, because it certainly will be defeated at the polls. Consequently, in a perfectly friendly manner, I am offering certain amendments this morning to this measure, in order that if it should chance to pass, at least it would be open to us to consider the advisability of supporting it at the polls. The first amendment which I wish to offer is this:

I move to substitute for the final section of the committee's report, beginning with the words on line 39, "but nothing herein contained", the words, "nothing herein contained shall be construed to prevent the State or any county, city or town, from paying not more than the ordinary rates for services previously rendered by a privately controlled hospital or infirmary."

I make that motion as an amendment.

Mr. EDWIN U. CURTIS of Boston: The majority of the committee on Bill of Rights, a very large majority, have reported Resolution No. 306. Gentlemen may be confused, having seen so many other copies of the proposed resolution, but it is No. 306 that is now before us. The committee feels that at this stage of the proceedings it should object to every amendment. It is a very difficult resolution to draw, and one word may change the entire meaning. We drew probably fifteen to twenty-five resolutions before we finally adopted this one that is submitted. I do not say that later in the proceedings of the Convention the committee will not be willing to make any amendment, but at the present stage the committee is opposed to the acceptance of any amendment to its resolution.

Mr. ANDERSON: I am very sorry to be forced to this line of action and did not expect to be until within five minutes. I want the Convention to understand that thoroughly. I had understood that my amendment had been accepted to all intents and purposes, and I

would have offered the amendment which I understood was accepted by the committee, if I had had a copy of it here. I am perfectly willing to substitute that, with a change or two, for the amendment which I already have offered if somebody will put it in my hands. However, it will be of the same tenor as the resolution which I have put in.

I object to the last clause of the resolution for the reason that it is so loosely drawn that it opens the door to almost everything. A distinguished citizen of this State who ran for delegate at large to this Convention but who was not elected, and who has bitterly opposed the anti-sectarian amendment on the stump again and again, said to a friend of mine that this section of the majority report not only opened the door wide, but invited everybody to come in. It seems to me that there is no necessity for this amendment, in the first place, and in that view the chairman of our committee at one time stood with me.

The genesis and the growth of this amendment is a remarkable and interesting history. When my friend from the fifth ward (formerly Ward 8, Boston) right here (Mr. Lomasney), a man whose heart is as big as his head is clear, offered his amendment before the Legislature, he did not think it was necessary to have any clause of this kind at all. But when the war came on and he thought of battles and pestilences and epidemics and disasters, he considered that the State ought to be able to pay some hospital for taking care of the people who might be affected. I quite agreed with him and told him that I would accept his amendment slightly differently worded, which wording he immediately accepted; so there we were agreed as we are agreed in a great many things, I find out. Then came the original of this majority report transmitted to the committee by our chairman, and that had no such clause. And when it was suggested in the committee that the clause should be put in, the chairman said that there was no necessity of it, and I agreed with him in the committee. I cannot follow all the various editions of this majority report. I tried to keep up for some days, filing a minority report every time they put in a majority report, but I gave up. If that is the game they have me beaten hands down. But if I remember correctly, the first amendment of this kind to the majority report was a very much simpler affair, and one to which I would object very much less than to this. It was intended to take care of the Eye and Ear Infirmary and the Perkins Institution for the Blind. Then our committee at the advice of our chairman parted company, and we were in two flocks for a while, and when the majority of the committee flocked together, they evolved this remarkable proposition which we have here, an absolutely wide open affair. A noted lawyer, a professor in a law school of high standing in this country, told me that the last clause of this report would permit almost anything, — old age pensions, or soldiers' pensions of any sort or outdoor relief, or anything you might desire. Just look at it: "The care and maintenance of such persons as may in whole or in part require support at the public charge." That takes in a great many persons.

The principal thing to which I object, however, is simply this: "through contract." "Through contract!" Our measure starts in with a certain proposition. I do not want to criticize it too severely, you know, because I might want at some time to support it at the

polls, so I cannot rip into it the way I might, if I wanted to. I do not want to; I want to handle it tenderly, you understand. But still I must say, the original idea of the measure, I think nobody will dispute me, would exclude all private institutions; and that is what my friend from the fifth ward (Mr. Lomasney) had in his measure, — all private institutions; perfectly straight. When our chairman brought in his first amendment, he used the words "except the Soldiers' Home in Massachusetts." I am not an expert on soldiers' homes, but a good many of the politicians here say that the exception of the Soldiers' Home is not necessary, that the Soldiers' Home of Massachusetts had better be supported by the State. That was the first exception. The thing was going along merrily, when all of a sudden one afternoon they got a letter from the librarian of the Springfield Library in which he told them that there were sixty-six towns and cities in this State that had libraries which would be affected by this majority report. The majority and the minority of the committee had never thought so far as a library, you know, and consequently they were utterly astounded and dumbfounded. It was like a bombshell exploding under them; they naturally thought that they could not run up against sixty-six cities and towns in the State, and so they excepted libraries. And then they thought they must except the Perkins Institution for the Blind and the Eye and Ear Infirmary to a certain extent at least by a rather innocuous clause like the one in the second edition. Now this is the third, fourth or fifth edition, — I have forgotten the count now, — but in this third, fourth or fifth edition, the one we have before us, you will see that the report practically takes out from under the principle of the amendment all of the hospitals and infirmaries and everything that is in the line of public health and everything that is in the line of poor relief, and by the time they get through excepting I do not know what will be left of their principle of private institutions.

Now how does it except almost everything? In this way: We know very well that contracts are made in cities and towns where a certain party, political or otherwise, has a very large majority; and often contracts are made in such a way as to give considerable support, are they not? And in such a city or town there is no reason in the world why, with a fat contract, the sectarian hospitals, infirmaries and so on and the private hospitals, infirmaries and so on should not be adequately supported just as much as by appropriations. We do not want to have the system that prevails in the city of New York and which caused that tremendous struggle down there last year. We do not want five millions of dollars of the State's money or city's money appropriated as it was in the city of New York for that kind of institutions. Anybody who read of that controversy knows what condition those institutions were in at the time that Mayor Mitchell held them up. We do not want that kind of thing, and this clause of the measure allows it absolutely, it seems to me, and it will take a good deal to convince me that it does not. I do not mean to say that it was put in on purpose to allow anything of that kind; I think it was put in by inadvertence, but the effect of it will be just exactly the same.

Now, I have been interviewing the State Board of Charities and the State Department of Health, and they tell me that the contract system is not the system in vogue in this State at the present time. So this report actually recommends to the Legislature in a certain way

a new system which is not now in vogue in this State, and which has been well kept out of it up to this moment. At the present time, so far as the State is concerned, the amount which may be paid for those who are sent to the hospitals and so on, is regulated by law; and the State pays in most instances, if not in all instances, less than it really costs the hospitals and infirmaries, and in the case of some sectarian institutions the sectarian institutions take charge of dependent children, — orphans, — absolutely for nothing. That was one of the fine things which I found out in my investigation of this matter. I discovered that some hundreds of orphan children who were sent to St. Mary's Orphan Asylum here in Boston, as I understand it, were actually received and cared for without charge. I thought that was a delightful thing. The asylum never sent any bill at all to the State for them. They had no contract in the matter; they simply took the children and cared for them freely and gratuitously out of the benevolence of those who support an institution of that sort. We do not need any contract; we do not need anything of this kind. It will be new in the State. Perhaps in a few cities or towns it may exist, but in the majority of the cities and towns it does not obtain. And I think that we better fix this measure up right here. I understand that the majority of the committee are ready to do it, though I believe they have no meeting in prospect and have tied themselves up in some way or other about it. But I hope that my amendment will not be voted down by the Convention on that account. We have come here in a spirit of accommodation in every way. I have said no bitter words because there was no bitter feeling in my heart, and now when we ask in the spirit of extreme accommodation and concession that our amendment should be adopted, it seems to me that it is only generous and right that it should be.

Mr. Coleman of Boston: May I ask the chairman of the committee on Bill of Rights, who is speaking for the majority (Mr. Edwin U. Curtis) if he will tell the Convention why that majority objects to the passing of the amendments that are being proposed by the member in the third section (Mr. Anderson) at the present time, when he, the chairman, intimates that they may be ready to accept them at a later time. It would help me very much if I could understand why the majority of the committee take that attitude.

Mr. Edwin U. Curtis: There are fifteen members on this committee. They sit all over this chamber. I am unable to ask each one of the fifteen whether he is willing to accept that amendment or not. I say they may be willing to accept some such amendments at a later stage; I cannot say now whether they will or not. And, gentlemen, I want to say this for the committee: This resolution offered here has borne my name. It is not my resolution. It is the resolution of the committee on Bill of Rights. There are fifteen gentlemen on that committee. Each one of those fifteen gentlemen has a mind of his own. He has shown it in every deliberation of that committee. I do not believe there is a man of that fifteen who has not got some word or some thought into the resolution which is now before you. I like credit for myself, but I do not like credit that does not belong to me, and if there is any credit in producing that resolution it belongs to every man, including the gentleman from Newton, who has contributed to that resolution as we now submit it. Gentlemen, we are

opposed to this amendment at the present time, as we are opposed to any other amendment. We are opposed to amendments because we have not gotten together and had an opportunity to consider them, and I cannot speak, and I will not speak, for the other fourteen men of my committee, who have minds of their own.

Mr. SAWYER of Ware: It is somewhat hazardous for one to express his judgment upon these matters who is not a member of the committee and not on the inside of any faction, that is, upon any of these amendments, but as a member of the Legislature for the past four years it seems to me that I detect something rather dangerous in this amendment that is offered. Both the amendment offered and the closing clause of the original resolution provide for the support and care of public or semi-public charges. The original resolution provides that the care of those charges shall be as authorized by the Legislature. The amendment takes away all legislative authority for the care of those charges, and constitutionally prohibits the Legislature from exercising authority over the care of those charges, leaving it open to the different cities, counties or towns. Mr. Chairman, what would that result in? It would result in the various institutions in the cities and counties and towns being thrown into politics. It would result in this most unhappy controversy, which is now somewhat of a State controversy, being localized in the various cities, towns and counties. Does this Convention want to take away from the Legislature the important power that the original resolution would give it, if we are to make any change in the Constitution at all? Does this Convention want to prohibit the exercise of this power by the larger body, the Legislature of the State, men who come up here from all walks of life, all religious faiths and all geographical sections of our State, who would be able as a fair-minded jury to decide upon things that localities, in the heat of battle and the heat, perhaps, of religious strife and controversy, could not decide upon for the benefit of the Commonwealth? I sincerely hope, Mr. Chairman, that we will look more than carefully at this amendment before we accept it. I do not know just how much force there is in the argument that is made by the gentleman who moves the amendment (Mr. Anderson) as to there being a violation of good faith in the issue of contracts. That would depend, of course, Mr. Chairman, upon the good faith of your Legislature. If you can trust your Legislature, why, we can believe that there would be no illegal or unfaithful contracts allowed to be issued. On the contrary, if this Convention and this committee feels it cannot trust its Legislature, a much simpler amendment would meet the objection of the gentleman who has just spoken by simply adding at the close of the whole section some such words as: "provided, that such contracts shall not be issued at rates in excess of the ordinary terms of service." That would still give the Legislature power, but would not give the Legislature power to approve a contract that was obviously intended to defeat a situation. I trust, Mr. Chairman, that if this committee is going to make any amendment of this sort it will make a simpler amendment, still leaving power in the Legislature; not constitutionally prohibiting your Legislature from having anything to say as to the disposition of the public charges of the future.

Mr. LOMASNEY of Boston: The gentleman is right when he says that the more you read this question, the more you examine these

measures, the more you will realize what an important question it is. This committee does not desire to shut off any proper relief, and it was in that spirit it met. Now what caused these lines to be added? The fear that the poor in some way would be affected. That was the cause. It was so as not to put anything into the Constitution that would prohibit anything, charity or anything else, which the State was now doing for the poor. That was the purpose of these lines. And of course when you get doctors of law and doctors of divinity arguing in a committee, where does a poor layman fit? What are you going to do, — follow the lawyer or follow the minister? If you want to go to heaven you probably will follow the minister; if you are going to live on earth you have to follow the lawyer. And the lawyers on this committee told us that these were the things to do and they also told us they had taken the best legal advice. Now I have respect for lawyers, but I have seen lawyers fool themselves, and that is why we have Supreme Courts. And when Supreme Courts have exercised the function given them by the Constitution we have seen them write minority reports. The purpose of our committee was to do nothing against the weakest individual or institution in this Commonwealth that properly should receive public money.

Mr. Newton of Everett: Is it also the purpose of this committee, when it is shown that they have made a mistake, to refuse to allow any amendments to be made?

Mr. Lomasney: If the gentleman had retained his seat a moment I would have come to that part. Now, Mr. Chairman, again it is a lawyer, and there are a hundred and fifty or sixty of them in this Convention. God knows when we are going to get through if we have to hear them all. [Laughter.]

For the first time this morning a former Attorney-General of this Commonwealth submitted a review of these lines, slightly different from that of Mr. Anderson, but I see no objection to them. We had a meeting of the committee; we had forty or fifty amendments offered. You must have organization and you must have discipline and you must have coöperation if you want efficiency. So we agreed to come into this Convention, and discuss the matter, — what for? Not to arrive at what any one person wants, but to arrive at that which was right for the entire State. And that was the spirit that permeated the mind of the chairman of the committee when he addressed the Convention. He said: "Discuss all these amendments, bring out the weak points in the measure; offer your amendments to cure them. Vote on the main question, so that we may know just what the views of a majority of this committee are, and then fix upon and put into this measure those words that will guarantee to every proper individual and institution in this State that to which it is entitled, so that it may relieve the State of the situation that it is now in." Of course the measure is entirely different from the first one. When it was my privilege, sir, to meet this question for the first time, I found men going through the Legislature whispering, — whispering, suggesting, — what? All kinds of things, — and I do not like to say anything any more than my brother behind me (Mr. Anderson) that would stir up any feeling here. Why, sir, he said just now he was surprised to find that the poor of a certain denomination were cared for so delightfully. Would you not think that, as a professor and as an expert on those matters, before he

started a campaign such as he has, he would have made inquiries to see what was the condition, what was actually being done; not what somebody was whispering to him was being done? Why, all elements in this State, Protestants, Catholics and Jews, regard their poor, and they regard them in such a way that they willingly contribute to their support. And he will find that a man does not ask what a man's religion is, if he is poor and he wants to help him. And that is the spirit we want to show in this case.

Mr. Chairman, we have not had a chance to meet and discuss this question. The question is: Do you want the main features of the Curtis Resolution, No. 306, to prevail? If so, let us adopt it. Let us then meet these amendments in Convention. Let every man here who has an idea express it, because, Mr. Chairman, the committee has no desire to suppress ideas. They want a measure perfect, with every interest safeguarded, so that it will receive the approval of the citizens of Massachusetts at the polls; for it will be one of the best things this Convention shall have done if it has removed this question from the political atmosphere.

Mr. PARKER of Lancaster: Because I believe that the committee on Bill of Rights, considering the subject embodied in the majority report of that committee, reflects the judgment of the committee, based upon what I believe to have been one of the fullest, the most deliberate, the most careful and the most conscientious investigations which a committee could make, the majority report of that committee is entitled to the respectful consideration of this Convention, which doubtless it will have; because also I myself believe that the provisions embodied in the majority report of the committee do in substance wisely and finally deal with the momentous but sensitive subject with which the report is concerned. I hope that the majority report of the committee will be adopted by the Convention sitting in Committee of the Whole, and I hope that this procedure will result, because I confidently entertain the belief, based upon conference with very many of my colleagues sitting in this Convention, that at later stages in the consideration of this measure there will be opportunity to consider, and probably to embody in a final draft of the measure, amendments which I am assured will harmonize the different views of all the delegates and result in a measure which will assure the people of the Commonwealth that this question, with which we are attempting wisely and definitely to deal, will be so safeguarded that hereafter it will be held wholly above and apart from the natural, normal disputations, discussions, attritions and asperities that always are involved in any discussion of public policy. Because I believe that the majority measure does reasonably secure these most desirable ends, and because especially I believe that further opportunity will be given, and will be availed of, to incorporate in this resolution some amendments which I think are distinctly meritorious, we may look for a harmonious and happily unanimous conclusion. I know, Mr. Chairman, that conferences have been held. I speak by no authority, but upon my own confident belief, when I say that the differences now outstanding are differences of phrase rather than of substance. Knowing the responsible attitude which all my colleagues hold to every proposition with which they are here to deal, I believe that these differences, chiefly of phraseology, when dealt with by candid and conscientious men, will be so resolved

that finally a measure having the substantially unanimous support of the Convention will result. I therefore hope that the report of the majority of the committee may be accepted, that the amendments now presented may not prevail, that with the proposition embodied in the majority report which is, I think, admittedly adequate, we may then proceed in an orderly, deliberate manner before committees or before the Convention itself to revise the measure by consideration of some further amendments, which I myself believe to be desirable as perfecting clauses.

Mr. ANDERSON: I want to say that this debate so far absolutely justifies my motion of yesterday to put this thing over until Tuesday. I think everybody sees that by this time if he has any eyes in his head. We are in a very unfortunate position here. The committee take the ground that they will accept no amendments, even if they believe in them, at this stage of the proceedings. They also say that they want all the amendments offered, in order that they may find out what the Convention wants, but they want all of them, as I understand it, voted down. Then I should say that the result of the whole matter will be that the Convention will understand that the Committee of the Whole does not want any amendments. Well, what are we going to do about it? I myself would be willing to go on in this unnatural way which has been proposed by the chairman of our committee (Mr. Edwin U. Curtis) if it were not for one thing. I am afraid of this debate, — not afraid of this debate for my amendment, not for a minute; my amendment will go through all right, I think, — but I am afraid that as we go on, incautiously somebody is going to say something which he will wish he had not said and which will cause somebody else to say something that he will wish he had not said, and the present situation, which is extremely favorable, may be all overturned. I wish I had enough parliamentary knowledge to know how to get out of this perplexity. I am going to ask the chairman of the Committee of the Whole for information now if a motion to recommit this matter to the committee on Bill of Rights would be in order.

The CHAIRMAN (Mr. Luce of Waltham): The Chair will rule that a motion to recommit will not be in order in Committee of the Whole.

Mr. ANDERSON: Would it be in order that this committee recommend to the Convention that this report be recommitted to the committee on Bill of Rights?

The CHAIRMAN: It would be so in order.

Mr. ANDERSON: I make that motion.

The CHAIRMAN: Mr. Anderson of Newton moves that in the matter of the resolution under consideration, with the pending amendment, the committee recommend to the Convention that the matter be recommitted to the committee on the Bill of Rights. Is the committee ready for that question?

Mr. EDWIN U. CURTIS: We should gain nothing by that, because when we brought in our next report there would still be other amendments. There are many gentlemen sitting in this room who have amendments, who have handed them to me. This is not the only amendment. There are other people interested. It seems to me that this Convention has been asked to play fast and loose about long enough. We ought now to get right down to business. I shall not say anything here that will stir up anybody's feelings; I do not see why any

other gentleman should. Let us all keep our tempers, but let us not be afraid to meet these issues and meet them fairly and squarely, and have it out, and have this subject out of the way. Now, the committee feels this way: As the ex-Attorney-General (Mr. Parker) has told you, this is a very delicate, a very hard measure to draw; and, gentlemen of the Convention, nobody knows it better than he. And, gentlemen, except the ex-Attorney-General, no lawyer of prominence here, no other of the great lawyers has helped us. He has helped us, and he knows what he says. He knows that the best thing to do is to pass this measure along and show that it in general meets the approval of this Convention, and then take up these amendments as we are willing to do, and try to straighten the thing out, and have it right. And I will say now, what before I did not say, that if this committee report this measure favorably to the Convention, when it comes up on the calendar in the Convention, as chairman of the committee on Bill of Rights I will then move that it lie on the table. Then everybody who has an amendment can bring it in to the committee, and we will consider it and report back our views.

Mr. GEORGE of Haverhill: I think that this Convention will have reason to congratulate itself upon the progress which it is making in the Committee of the Whole. I think the gentleman from Newton (Mr. Anderson) is a little apprehensive. There is a very easy way of handling this matter. Let us discuss this question for the next hour and then the committee rises and reports to the Convention progress, and this question takes its place in the Orders of the Day for next Tuesday. That is an easy method; nobody is harmed.

I do not agree with the last speaker that we have got to force this thing out of the Committee of the Whole to-day, if that is his purpose. The place for this resolution is in the Committee of the Whole, where we all can discuss it in an informal way. I am not prepared to discuss it to-day because there are so many questions coming up in relation to various aspects of this resolution that we cannot reach it in the course of an hour. Now let us go on and discuss this resolution, and when the committee rises and reports progress to the Convention, the Convention adjourns and next Tuesday we will take this matter up where we left off. Anybody who has any amendments that he wants to offer can bring them in here at this time. I have an idea, Mr. Chairman, that this matter is going to be discussed in the Committee of the Whole right here for two or three days, and it ought to be. Who is there who is afraid to discuss this question? Why, it seems to me that we are trying to look for trouble when we seem to invite people to say things or infer that somebody is going to say things that somebody will not like. I know in past debates people have said a good many things that I did not like, but I was not provoked about it. We can get along here as reasonable, intelligent men, and we are making great progress here in the Committee of the Whole.

Now I do not think that the committee is going to insist that we shall have a vote to-day to report this to the Convention. There is no reason for it and it ought not to be done. Let us discuss this for the next hour and then let the committee rise, and the Convention will adjourn and the western people will go home and we all will come back next Tuesday morning ready to spend the whole day in considering this resolution.

Mr. EDWIN U. CURTIS: I should like to explain, gentlemen, that I had no expectation of getting a vote to-day; I have not had even an opportunity to explain it. I never expected it would pass to-day.

Mr. COLEMAN of Boston: There was one little point which seems to have been overlooked. The gentleman who is proposing the amendment (Mr. Anderson) said in his opening remarks something that intimated that he expected that this amendment, and other amendments which he intended to propose, would meet with the approval of the majority of the committee, and that he had not known until five minutes before he rose that that situation would not prevail. Now, the chairman of the committee on Bill of Rights refers to the amendment offered by the gentleman in the third division (Mr. Anderson) as though it were a miscellaneous amendment, that might be offered by any one in this Convention, of which the majority had no particular knowledge in advance. It would appear from the remarks made by the gentleman from Newton (Mr. Anderson) that there had been some tentative understanding between the minority and the majority with reference to these amendments that he is about to propose. Now if, as we understand from the chairman of the committee on Bill of Rights, he has not had opportunity to consult the majority with reference to these various amendments, would it not be wise and fair, and help in expediting business, if we gave the majority and the minority an opportunity to come together between now and Tuesday and find out whether it was possible for them to come to an agreement? If they cannot we might well proceed as we are proceeding now, but if they possibly can, why, it would save a great deal of time and possibly some confusion, and, as the gentleman from Newton said, some unfortunate discussion.

Mr. GEORGE: I should like to ask the gentleman in this division (Mr. Coleman) if the committee should rise and report to the Convention, what there is to hinder the majority and minority members of this committee getting together and staying together all the time between now and next Tuesday morning, and harmonize everything that they want to, and come in here with a substitute?

Mr. COLEMAN: In order to bring the matter to some action, I move that the Committee of the Whole rise.

The CHAIRMAN: Mr. Coleman of Boston moves that the Committee of the Whole now rise.

Mr. LOMASNEY: I hope, Mr. Chairman, that motion will not prevail until every man in this Convention who has an amendment shall offer it. Two or three gentlemen have given me amendments. Let every man put his amendment in here and have it printed. We shall have then until next Tuesday to see what they are, to think them over; and then we shall have two or three days to go over all these matters. What is the use of rising now with only this one amendment before us and then come in next week and have a dozen more offered? Let every man put his hand on the table; let him put his amendment in and have it printed, then when we have a conference we shall have the whole matter before us. Then it cannot be said that anybody was trying to force the matter. I know the gentleman misunderstood the position of the chairman of the committee. He said he did not desire to force a vote to-day. We never shall get together on this measure if we do not have the confidence in, and submit, what we believe

will perfect. Why, people have come to me with two or three amendments and asked: "What do you think of this?" I could not offer them. Now let the gentleman put them in and have them printed and then they will be properly before us. I hope we will not rise and report progress until that is done.

Mr. Edwin U. Curtis: I certainly hope the committee will not rise. It is quarter of twelve; we have another hour. I am prepared to go ahead and make a statement to the Committee of the Whole on this resolution and tell the committee what it is about. I think Mr. Lomasney's suggestion fair, that the amendments be presented so that the members may know what was pending.

Mr. William H. Sullivan of Boston: As a member of the committee on Bill of Rights, I feel, if you will indulge me just a moment to say so, because of my experience on the committee on Bill of Rights, that there is no possibility of getting together with the only infallible member, the minority of that committee. I rose some moments ago to ask him seriously, if this amendment which he has suggested prevailed would he and his powerful cohorts then support at the polls this measure, the majority measure, if the Convention decided to submit it to the people? Mr. Chairman, in the course of our very courteous questioning of the infallible member of the committee when he appeared before us, I asked him if in its discretion and wisdom the Convention saw fit not to submit his amendment, but to submit to the people the perfected amendment which included everything, would he and his friends then support it at the polls, and he said "No." Now, what is the sense of continuing this effort for further compromise? Such is the course of conduct he has pursued throughout, — delay and bickering and pretended amendments, to all of which amendments we have agreed; and I would agree to this one which he has sought to submit here, but he is not acting in good faith, it seems to me — (the Chairman rapped). I will withdraw that statement. It seems to me that I am justified in refusing to acquiesce in his amendment. That is why I think we ought to discuss here and now the substantive matter and I will close with the suggestion, which has been made before, that we ought to discuss and come to a conclusion as to substantially what measure we wish to pass and submit to the people, and then amend it later. What is the sense of wasting time making amendments to a measure until we know if said measure will be adopted by the Convention?

Mr. Coleman: I made my motion with the hope, and the expectation, that when the majority and minority came together with reference to the amendments that are about to be proposed, they would find that the whole fifteen of them can agree upon all of them.

Mr. Pelletier of Boston: I hope that this committee will not rise at this time. I hope they will not recommit at this time. I hope they will take the offer of the chairman of our committee and let him explain the measure that is before you. Something has been said by the gentleman from Newton (Mr. Anderson) indicating that he was misled. As a member of that committee who has attended all its meetings, and been at all the meetings of this body, I will say that I have heard of no amendments until the article which appeared in the Boston Journal this week telling about a meeting at the Union Club. Yesterday I heard murmurings of that amend-

ment. This morning two gentlemen met me in the corridor and said: "What do you think of this? If you will agree to this the minority will withdraw." It was eight or ten lines written in handwriting. "Why," I said, "I cannot pass upon this; I am only one member of the committee anyhow. Where have you been during these weeks we have been in session?"

We have been surprised, really, at the small assistance we have had. We knew there was a tremendous amount of public interest, but it did not fructify, it did not crystallize, in any way of helpfulness toward us; and the gentleman from Newton (Mr. Anderson) comes in with some amendment, and intimates that if it is accepted he may withdraw something else. To repeat what the gentleman from Boston (Mr. William H. Sullivan) has said, we heard that very frequently in the committee. Day after day we adjourned and thought things would be all right, but during the night something happened and the next day we found we had not agreed.

Now, the proposition made by the chairman of this committee is a fair one. We ask you to take document No. 306 and approve it; say to the Convention: "This measure we approve." We then have a skeleton on which to build. The chairman says that when we go into Convention, if you will take that measure in, he will ask you to lay it on the table, and that means that the committee will take it again. It will not be a question of being buttonholed then. It will not be a question then of "if you do this I will do that." It will be a question of having a meeting here, I hope on Monday, right away, and saying: "Come hither all ye with amendments and let us talk it over." Then the committee can go into executive session and be ready to do business on Tuesday.

Now, what rights are lost? You have two opportunities to debate this or any other measure in the Convention. But to-morrow or next Tuesday some honest man comes along who has had a wonderful light, — and it is surprising the way these wonderful lights come to different men on this sectarian measure; they never have given it a thought, but suddenly they get a wonderful idea. Next Tuesday some one is going to have it, going to come in and rise here and say: "I have seen the committee; they are very much impressed; will not the Convention put this over until to-morrow?"

Now, that is not surprising and perhaps it is commendable, but still we are here for business. We have general ideas. In this so-called Curtis amendment you get the mind of fourteen out of fifteen members of that committee. Three or four besides the gentleman from Newton (Mr. Anderson) reserved the right to dissent, but they did not dissent; and we have all kinds and types and different walks of life represented there. We ask you, then, to take that measure and send it in to the Convention, let it go on the table, and then lay before the committee considering the Curtis amendment the proposed amendments, that they may be able in an orderly way to give them some decent consideration.

Mr. Coleman: In order that the next hour may be profitably used by the Committee of the Whole, I should like to offer this suggestion, and ask the member from Newton (Mr. Anderson) if I were to ask for unanimous consent to withdraw my motion that the committee do now rise, would he then also ask for unanimous consent to withdraw his amend-

ment temporarily, in order that the chairman of the committee on Bill of Rights might have the rest of the time in order to explain to us his measure? May I ask the gentleman from Newton that question?

Mr. Anderson: I have no objection to that, and of course I shall withdraw my amendment. I want to say, while I am on my feet, in reply to the gentleman from Boston in the fourth division (Mr. William H. Sullivan), who seemed to think I was insincere, that no man in this Convention is more sincere than I am in desiring to get this thing settled, and settled right; and no man is liable in the end to make greater sacrifices for it. I want to be met in a spirit of accommodation when I am ready to make those sacrifices.

There being no objection, Mr. Coleman's motion that the Committee of the Whole rise and Mr. Anderson's amendment were withdrawn.

Mr. Edwin U. Curtis: I am going to ask your indulgence for about about twenty or twenty-five minutes, not over that, in making this statement, and in the course of what I have to say I shall quote briefly from the debates of the 1853 Convention, which may seem dull to some of you but which will place this matter historically before the Convention so that we shall understand the whole proposition.

What is commonly known as anti-sectarian agitation for many years has exercised an unfortunate influence in our body politic and in the life of Massachusetts. It has been the subject of many intemperate speeches and on various occasions has caused the election or defeat of candidates for public office. It has become, in fact, the catspaw of petty politicians. Most of the discussions of the question have been based upon a misunderstanding of existing constitutional limitations and of the conditions calling for a change, and they have resulted in stirring up needless religious prejudice and in sowing discord among neighbors and friends. It is high time, as I think we all are agreed, that such an influence be eradicated from the body politic.

The subject, however, should be approached in a calm and dispassionate way. There is not the slightest need of casting aspersions upon any church, sect or denomination. Abuse or even unfriendly criticism of any particular form of religion falls wide of the mark and is not argument. The Constitution provides for absolute freedom in religious worship; it has regard for the individual conscience. Such a provision is in harmony with what we find in the Constitution of the United States and with the Americanism we all approve and desire to maintain. I am sure that every man of us recognizes the right of every other man to worship God in the form and manner which he prefers. Observing the spirit as well as the letter of this constitutional provision it ought to be possible for us, as sensible men, as true Americans, and as fellow-citizens in a great Commonwealth, to discuss the question before us as one, above all others, to be discussed "with malice toward none, with charity for all, with firmness in the right as God gives us to see the right." Only in this way can we hope to arrive at any wise and wholesome conclusion. On this basis, then, the committee has proceeded.

The controversy which has smouldered and flamed ever since the Convention of 1853 arises from the fact that while the individual is guaranteed complete freedom from legislative control of his conscience and religious beliefs, his property is not yet freed from the liability of

being applied through taxation to the support of institutions which may be conducted under the auspices of those holding religious opinions different from his own; or, as commonly expressed, to sectarian purposes. While to practical men there may not seem to be any real danger or objection in this, it must not be forgotten that there are many citizens to whose tender consciences those conditions are causes of real alarm. The question, however, is not entirely devoid of interest from the practical side, as will be seen from the following table showing the amounts which have been appropriated by the Legislature to charitable and educational institutions not under the control of the State during different periods from 1786 to 1917, inclusive.

If these figures do not seem to agree with those in the printed pamphlet, it is because I have added, in making up my statement, the appropriations for 1917.

Appropriations.

	Charitable.	Educational.
1786 to 1860,	$257,500 00	$183,651 50
1860 to 1917,	6,871,460 84	10,707,785 40
	$7,128,960 84	$10,891,436 90

As the Massachusetts Agricultural College, however, became a State institution in 1911, there should be deducted from the total amount appropriated for educational institutions not under the control of the State in the periods stated the sum of $3,110,264.37 appropriated since 1910 to the Agricultural College. This leaves $7,781,172.53 appropriated to educational institutions from 1786 to 1917. These figures are large figures however long a period we spread them over, considering that they represent sums spent on objects of a private character in which the State is not strictly interested. But the real significance of these figures in connection with the so-called sectarian agitation lies in this: That from practically the time at which the Constitution was adopted until a point shortly after the Convention of 1853, or to put it another way, during the first 74 years of our constitutional government, only $257,500 were appropriated by the Legislature to charitable institutions and $183,651.50 to educational institutions; but in the succeeding period of 57 years $6,871,460.84 have been appropriated to charitable institutions and $7,597,521.03 to educational institutions. Here is food for reflection for even the practical man. What a disproportionate growth! How many finely equipped and ample educational and charitable institutions could have been owned and supported by the State with the appropriations here represented! The question is not wholly one of tender conscience.

The danger of appropriating public money for practically private or, as it is sometimes called, sectarian purposes was recognized by the Convention of 1853, which proposed what subsequently became the eighteenth amendment, safeguarding the common schools.

The attention of that Convention, however, was concentrated on one phase only of the question, namely, the possible diversion of money raised for school purposes from the use of the public or common

schools to the use of other schools subject to sectarian influence and control. That Convention, therefore, went no further than to place the integrity of the public school system beyond all danger by proposing the eighteenth amendment. The debates in the Convention, furthermore, show clearly that while it recognized that a general principle was involved it was not the intention at that time to go further and to forbid the appropriation of money to the use of higher educational institutions, societies or undertakings even though they should be under sectarian or ecclesiastical control. To illustrate what the Convention of 1853 intended to accomplish in the eighteenth amendment, and the field which the Convention purposely left open, I may be pardoned for quoting at some length from the debates in that Convention.

A committee known as the committee on the Encouragement of Literature was instructed "to inquire into the expediency of so amending the Constitution that the school fund, belonging to the Commonwealth, shall never be appropriated or applied to the support of any sectarian schools, or schools founded upon sectarian principles." That was the subject for debate in the 1853 Convention.

On July 6 the committee reported as follows: — "Resolved, that it is expedient so to amend the Constitution, so as to provide that no public money in this Commonwealth, whether accruing from funds, or raised by taxation, shall ever be appropriated for the support of sectarian or denominational schools."

The inquiry was at once raised as to the extent of meaning to be attached to the word "schools."

Gentlemen, it is well here to note that the very question which we are asked to consider here in accepting amendments arose right there, on the meaning of these words, and you see at once what a very difficult resolution you have to draw.

The inquiry was raised whether it was confined to common district schools, or whether it would include "academies, colleges, or other institutions of learning," which prompted a motion that the word "colleges" should be added after the word "schools." To this Mr. Blagden of Boston, one of the committee, replied that "the committee understood by the term schools, the common schools," and that he understood distinctly that it "did not embrace colleges." He was followed by Mr. Lothrop of Boston, another member of the same committee, who hoped that the amendment inserting the word "colleges" would not be adopted. His argument is illuminating and worth quoting at some length: "This resolution relates simply to the *common schools* of the Commonwealth, and to the public money arising from the *income of the school fund*, and from *taxes levied* for the support of those *schools*, and we wish to provide against any sectarian or denominational influence being brought to bear in their management. That covers the whole extent of the resolution." Mr. Lothrop therefore concluded that nothing could be gained by adding the word "colleges," and considerable confusion might arise thereby. To illustrate this point he supposed a case where in the course of a few years something should occur which should dispose or induce the Legislature of the Commonwealth to make an appropriation from the State Treasury to Amherst or Williams College, or to the University at Cambridge.

And I understand that this controversy in the 1853 Convention pre-

sumably was not waged against any religious association which is now in controversy; I understand it was a quarrel between factions of the other side.

Each of these institutions was, Mr. Lothrop said, to a limited extent at least, "*in the hands of a particular religious denomination*, and yet the general interests of education might be promoted and the whole State benefited by such an appropriation from the Commonwealth to one or another of these colleges, — yet, it might *be argued that it could not be done under this article of the Constitution*," provided the amendment by adding the word "college" prevailed, and "this argument would be conclusive; — *the college being in the hands of trustees* of a particular denomination would, upon a strict construction, come within the rule, *and be regarded as sectarian in its character*."

Gentlemen, in the last amendment presented by the gentleman from Newton (Mr. Anderson), — and while some fun was poked at the committee for the many amendments that we have drawn, I think he has drawn several, — he has left out the words "ecclesiastical" and "sectarian." I have a reference here to the debates of 1853 as to the use of those words, and I have been perfectly prepared to discuss why they should not appear in any amendment, but as they do not occur in the last one I have seen offered here I will not discuss it.

Hon. Henry Wilson, afterward Vice-President of the United States, also objected to the addition of the word "college." He assumed the resolution was intended to apply strictly to common schools, the object to be attained being that the common schools should be open to all the children of the State, without distinction of sect or condition; and that the school fund, not only that portion of the proceeds of which are to be applied to common school education, but that which is raised by taxation, should be preserved, so that the common schools in the future should stand as they did then and had stood in the past, and "to avoid if possible the question which may hereafter arise as to the establishing of sectarian schools." He thought the resolution not so clear as it ought to be, and said that he has seen a resolution drawn by Mr. Parker of Cambridge which he thought covered the ground. He concluded by saying: "I am willing to vote money, if we have it to spare, to Williams College, or Amherst, or Harvard College, or any other sectarian colleges or seminaries of learning. *They are all sectarian*, more or less, and I think they should not be mixed up with the common schools, where we all say sectarianism should never come."

During this part of the debate an objection was made by Mr. Keyes, delegate from Dedham, on an entirely different ground, namely, that the meaning of the words "sectarian or denominational schools" was doubtful. He claimed that all schools were under the influence in chief of some denomination or other.

The real point, gentlemen, of my making these remarks is to put something into this record by which, if this resolution passes, the courts can see what this Convention intended to do. Plainly, from the decision of the Court of Massachusetts, they read the debate of the 1853 Convention and they saw what the Convention meant do to. They meant to touch nothing but the common schools. That they did, and that the Supreme Judicial Court afterwards said was what they did.

Mr. Bird of Walpole said he did not see the ground of distinction between appropriations of the public money for common schools and

similar appropriations for colleges. He did not agree with Mr. Wilson in leaving the matter open so that when there was money to spare it might be appropriated to sectarian colleges. If it should not be appropriated to sectarian common schools, why to sectarian high schools, and if not to sectarian high schools, why to sectarian normal schools, and if not to sectarian normal schools, why to sectarian colleges? So you see the subject was considered there. If he were willing to vote for a proposition of this kind he would vote for one that "*would cover the whole ground, and forever prevent the appropriation of a single dollar of the public money to any school whatever of a sectarian character, — using the word school in its broadest sense, as including seminaries of learning of all descriptions.*"

So that was Mr. Bird's idea of the way to stop it then, as we are endeavoring to stop it now in 1917.

During the latter part of the debate on this day Mr. Joel Parker of Cambridge offered his amendment which had been referred to by Mr. Henry Wilson, and on July 23 offered it again in a modified form as follows: — "Resolved, that the money raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, shall be applied to, and expended in, no other schools than those which are conducted according to law under the order and superintendence of the authorities of the town or city in which the money is to be expended, and such moneys shall never be appropriated to any religious sect for the maintenance, exclusively, of its own schools."

On July 27, without further debate, the resolution of Mr. Parker was adopted by the Convention.

On July 29, the debate was again renewed on a motion to reconsider the adoption of the Parker resolve. That is, to all intents and purposes a debate took place on what is now the eighteenth amendment. This debate, therefore, is of especial significance as indicating what the Convention thought the meaning and effect of the present eighteenth amendment to be.

Mr. Bird of Walpole, arguing for reconsideration of the resolve, said: "It does not say one word *about giving any portion of the money of the State to colleges and higher seminaries of learning. Money may be appropriated to sectarian colleges, notwithstanding its adoption;* and I submit that from our action here it may be inferred that we are willing that the public money should be given to sectarian academies and colleges."

Mr. Chandler of Greenfield, a member of the committee on Encouragement of Literature, said: "*We do not require the Constitution to forbid the bestowal of money upon any college in the State, sectarian or otherwise,* but the money thus appropriated *is not to come out of this fund.*"

Now see what our friend Mr. Butler of Lowell said. Mr. Butler of Lowell said the resolve first reported by the committee covered all schools "from the humble village school to Harvard University. It precluded the appropriation of money to the support of sectarian or denominational schools, of whatever grade, or class, or description." But the amendment drawn by Mr. Parker *left it open for money* to be appropriated to Harvard or any other institution whether sectarian

or not. No attempt was made to answer these arguments and the Convention finally refused to reconsider its action adopting the resolve.

Had they paid attention to Mr. Bird of Walpole or to Mr. Butler of Lowell, or to some of those other gentlemen, the agitation which has gone on here from 1853 to to-day, and has made us all more or less trouble, never would have arisen. They had the opportunity to settle it, as you gentlemen have to-day, and they did not settle it.

Mr. Parker's resolve, therefore, was submitted to the people with other amendments of the Convention. It was rejected, however, by the popular vote by a majority of only about 400. Subsequently, the same proposition for amendment was adopted by the legislatures of the years 1854 and 1855, and having been ratified by the people in May, 1855, became incorporated into the Constitution as the eighteenth Article of Amendment.

The debates alone of the Convention of 1853 seem to leave no doubt that the Convention designedly refused to take away the power to appropriate money for maintaining or aiding other schools and educational institutions which might be wholly or in part under sectarian influences, and such has been declared by the Supreme Judicial Court to be the result of the eighteenth amendment. This was one of the questions specifically submitted by the Legislature to the court in the Opinions of the Justices in 1913 in 214 Mass. 600.

It is idle to speculate now why the Convention of 1853 stopped short with the common schools in dealing with the subject. If it could have foreseen the appropriations subsequently made to charitable and educational institutions that Convention might have gone further. That Convention, however, recognized that at least so far as both schools and higher educational institutions were concerned the same fundamental policy was involved. It is difficult to-day to understand why, if sectarian control was then such a menace to educational institutions as to make it necessary to establish a policy in regard to one class of schools, it was not also desirable as a matter of principle to apply the same policy to all classes of educational institutions. Conditions to-day indicate that it would have been far wiser to have settled the whole question then once and for all. The failure to do so furnishes another illustration of the truth that a question is not settled until it is settled right, and that temporizing with a principle only serves to strengthen its ultimate demand for full recognition. It seems plain that it is the duty of the present Convention to avoid this mistake of the Convention of 1853 and if possible put a quietus forever on the question of sectarian appropriations. This is a general conclusion to which every one probably will assent. It is apprehended that the only difficulty will arise on the question of how far this Convention shall go in applying the general principle partially put into operation by the Convention of 1853. But in the end it seems inevitable that if we have the courage to follow the guidance of principle to its logical conclusions, if we would escape the error of the 1853 Convention, if we would obviate the necessity of still another Convention to complete our work as we now propose to complete the work of the 1853 Convention, only one settlement of this question seems possible. That is the adoption of a constitutional amendment which shall forever prevent the appropriation of public money for the support of any insti-

tution whatever which is not, like the common schools, under the supervision and control of some public authority.

The first part of the proposed amendment down to the words "and no grant," with the exception of the eleven words at the beginning, "No law shall be passed prohibiting the free exercise of religion," is exactly the same wording as that of the present Article XVIII of the Amendments of the Bill of Rights. This language has not been changed as it is considered that the question of public schools has been settled by the Supreme Judicial Court of this State in the cases of Merrick *v.* Amherst (12 Allen, 500) and Jenkins *v.* Andover (103 Mass. 94), and by the opinion of the Justices of the Supreme Judicial Court given to the Legislature dated June 2, 1913 (214 Mass. 599), which provides in effect that moneys raised by taxation, etc., for the purpose of expenditure for the public or common schools, as these words generally have been understood, must be dispensed exclusively for the support of such schools and cannot be diverted to any other kind of school maintained in whole or in part by any religious sect.

Now, the committee did not want to change those words. Why? Because they were adjudicated and that question was settled; it was no use ever to bring up the question of common schools again. And the committee considers that they are settled by those decisions, and therefore they changed not a word of the old article down to the words "and no grant."

But the opinion cited in the 214 Mass. also states that there is no constitutional prohibition against appropriations for higher educational institutions, societies or undertakings under sectarian or ecclesiastical control.

The proposed resolution therefore commencing with the words "and no grant" attempts to correct this and to prevent appropriations or use of public money for the purpose of maintaining higher educational institutions, societies or other undertakings under the control of any religious denomination, and further to prevent the use of any money raised by taxation or otherwise for any undertaking whatever that is not under State control, with the exception of the matters specially mentioned.

The Soldiers' Home in Massachusetts is excepted. It has been in existence for over thirty-five years and was founded by the Massachusetts Grand Army of the Republic assisted by the Military Order of the Loyal Legion, the Women's Relief Corps and the Sons and Daughters of Veterans.

The present valuation of the property is about $500,000. This property reverts to the Commonwealth when the institution is wound up.

The Home is maintained by the Commonwealth which last year appropriated over $100,000; the United States Government which last year appropriated $46,896, and the balance being from private contributions and donations from the Grand Army of the Republic, Women's Relief Corps, Sons and Daughters of Veterans and Spanish War Veterans.

The board of trustees is made up of twenty-one citizens, of whom fifteen are members of the Grand Army of the Republic, three appointed by the Governor and the other three coming from Sons of Veterans, Spanish War Veterans and the citizenship of the Common-

wealth. All the trustees, excepting those appointed by the Governor, are nominated by the board of trustees.

Practically all of the rooms in the Home are maintained and cared for by the Posts of the Grand Army of the Republic, the Women's Relief Corps and the Sons and Daughters of Veterans.

While the committee considers it would be much better if this institution were run wholly as a State institution it probably would require lengthy negotiations to bring this about and it can be done at any time, if at all, through action of the Legislature.

The committee was of the opinion that no member of this Convention would desire to deprive any old soldier of the benefits of this Home. Hence they made the exception.

It was ascertained that there were in the Commonwealth in the neighborhood of 75 private libraries open for public use which were maintained partially by endowments and partially by contributions from cities or towns and that the endowments in many cases, under the terms by which the funds were left, could not be transferred to the cities or towns.

And, gentlemen, we thought at first that they could be transferred and we did not except the libraries. Then we found the funds could not be transferred and did except the libraries. There was not any guesswork or uncertainty. We went into the whole question, and we have a quantity of literature and citations on it. The committee, therefore, realizing that libraries open for public use were of great assistance to the education of the people, have made this exemption.

The committee also realized that the Commonwealth, — we have nothing to conceal, — sends to private institutions many blind persons and persons affected with eye and ear trouble, also many persons sick or injured, who are unable to pay their expenses in these institutions either in whole or in part; that it boards at its own expense many neglected and delinquent children and persons lacking means of support. Therefore it is provided in the last paragraph that the State may continue these and other contractual relations.

Gentlemen, there is no hidden motive in the wording of that last phrase. The committee considered it carefully. They rewrote that three or four times, amending conscientiously the first draft they had in hand. It may not be right now. It is just as apt to be right in phraseology as that which any gentleman gets up on the floor and offers here without careful consideration. That is all we ask of this Convention. We ask to put this theory of ours through, give us a chance to amend it, if necessary, knowing as we do all these little difficulties.

It was said at first that the chairman did not believe any such clause was necessary. That statement was absolutely true. I believed as a matter of law that the State had an inherent right to make contracts, and that that right to make contracts could not be taken away from the State without specific language; that the Supreme Judicial Court would not take away the contractual relation unless the language was so specific as to show that they intended to do it. I so stated and that was my belief. I am not sure now that I am not right in the law. But a more eminent lawyer than myself, a man accustomed to giving public opinions, said he thought it was dangerous, and so we put in the last clause. The chairman did not change his mind, nobody "pulled"

him, nobody is trying to use any influence on me on this subject. I took the advice of a better lawyer than I was, to save any question. There is nothing dark or hidden in that matter.

In short, this amendment provides:

First. — Against the appropriation of money raised by taxation or otherwise for the support of public schools to the support of any school which is not a common school.

Second. — Against the grant or appropriation of public money or property of any kind for the purpose of founding, aiding or maintaining any college, hospital, institution or undertaking which is not under public control, with the exceptions above stated, and against such grant under any circumstances for founding or aiding any church, religious denomination or society.

At this time when the Commonwealth needs the support and good will of every person within its bounds it is no time to work up race or religious prejudice. Let us hope, therefore, that the Convention will settle this much discussed question along these broad lines, complete the work of the 1853 Convention and once for all close the discussion of this subject.

I have exceeded the time I indicated, gentlemen, for which I crave your pardon. [Applause.]

Mr. BENNETT of Saugus: There are several points in regard to this matter on which I should like further information. Unless I am wrong, it seems to me that this proposition here, this resolution, contains three separate and different amendments, one of which I favor, one of which I oppose, and on one of which I am in doubt, although generally I have been in favor of it.

The first proposition is to prevent the appropriation of public money for sectarian educational institutions. The second proposition is to prevent the appropriation of public money for sectarian hospitals and other institutions than schools. The third proposition is to prevent the appropriation of money for a variety of public purposes to private institutions.

Now, I am very much opposed to that. I do not see why we have not got the right to appropriate money for the textile schools, for instance, which have been quite a feature in Massachusetts in the last few years, under private guidance and private control. I fail to see why it is not a good thing to appropriate public money for those and any other similar institutions. Why, in regard to many functions for the benefit of the Commonwealth we are very ardently taking entirely opposite grounds. We have just voted down a resolution to permit the State to engage in the sale of merchandise or engage in manufacturing. We have just voted that down because we want private parties to do it.

Now, am I wrong in thinking that we have taken opposite ground there to what is proposed here? The State Highway Commission proposes to build a piece of State highway. Before the State goes in and builds it it does now, or used to, ask for contracts, first from the locality, the towns and cities, through which it passes, and next from private contractors. The city of Boston, or at any rate most cities, make contracts for a great variety of public purposes.

Now, there are not only textile schools but there are the private hospitals. I think they have exempted libraries here, but there are

the public hospitals in various towns and cities, run on the bequests of private persons and supported largely by private beneficence, but aided by appropriations of the towns and cities. It seems to me that this would do away with that.

Now, when it comes to sectarian hospitals and other similar institutions we have an entirely different proposition. I always voted for appropriations for Carney Hospital; and, in spite of some excitement and some hostility by certain orders and certain people of a different way of thinking, I never had the slightest difficulty in explaining it. I never had the slightest difficulty and it never was made a political issue. I never had the slightest difficulty in explaining that that hospital was performing service which the State would have had to perform, and less efficiently, if that hospital had not done it.

Now, it seems to me I ought to have a chance to vote differently on those matters. When we come to sectarian schools it seems to me that I am in favor most decidedly of that portion of this report, because I believe in the public school system, and I believe that it has been almost the principal cause of the progress of this Nation, in that it has become what it has.

I had a gentleman visiting me the other day from Iowa, who said he was brought up in a community of Poles, or people of Polish extraction, and he said almost invariably in the third generation you could not tell them from Yankees, from natural born Americans, except that they had more children. That is the only way you can tell them. They came over here more or less dirty, immoral and thriftless, and in the third generation they were changed to native Americans. And, as I say, they differed from them then only in that particular, which I think is almost the fundamental cause of this principle coming in here at all, namely, that some races increase faster than others.

Now, Mr. Chairman, I would like to get a chance, unless I am entirely misinformed, to vote on these three propositions separately. It seems to me I am entitled to have that chance. It not only seems to me I am entitled to have that chance, but it seems to me that the voters are entitled to have that chance at the polls, to vote upon them separately. I listened with as much care as possible to the reading of the chairman of the committee on Bill of Rights from the proceedings of the Convention of 1853, and it seemed to me that they were confronted with precisely the questions that we are confronted with, and that they most deliberately decided that they would not go into the prevention of the Commonwealth having work performed in the most efficient and most economic manner, and they rejected that proposition. They would not go into the question of public appropriations for hospitals, and for certain special institutions of learning, as textile schools, and they defeated that proposition. And, if I understood the gentleman correctly, what they did is precisely what I hope we will do, — prevent any appropriations of public money for minor sectarian educational institutions, and cut off the rest of it.

Mr. Chairman, I trust the matter may shape itself in that way. I think we are entitled to have it shape itself that way. I make no reflection upon the condition of affairs which brought about this wonderful combination in this amendment, but I cannot help having a little suspicion on the subject when I remember how ardently a very able gentleman in this body always has opposed appropriations for the

Institute of Technology and other similar institutions. The Institute of Technology has become very rich. How about textile schools, how about shoemaking schools, how about tailors' schools, dressmakers' schools, what not? In this manifold system of technical training into which we are now coming, what are we going to do about that? I understand we are going to cut it if it goes through, we are going to cut it off neck and crop. I do not believe the people will do it.

Now, I have been impressed with the sincerity of utterance of the chairman of this committee (Mr. Curtis), and I am not going to say that I think this amendment is put in this way for the purpose of killing the whole proposition. And my judgment may be wrong, very likely it is, but if I wanted to kill the whole proposition at the polls it seems to me that I could not do a cuter thing than to put these three entirely different propositions together in one. I hope, Mr. Chairman, that we shall have some way of getting at this and having these three separate.

On Tuesday, the 24th of July, Mr. Edwin U. Curtis of Boston, chairman of the committee on Bill of Rights, announced that the committee had unanimously agreed upon a form of amendment which he offered as a substitute for the measure originally reported by the committee. In explanation of the reasons for the changes recommended Mr. Curtis said: —

Mr. Edwin U. Curtis: In reading over the resolution this morning the committee discovered that in line 22, after the word "learning", these words should have been printed: ", whether under public control or otherwise,". They were read by the secretary as we had made the amendment.

Mr. Chairman, it is with great pleasure that I announce to the Convention that the resolution as now presented represents the unanimous opinion of the committee on Bill of Rights. [Applause.] I want to say, however, that there are certain gentlemen on the committee who reserve their right to vote as they may please on certain amendments that may be offered. The committee made the following changes. Gentlemen have the old resolution for reference.

Referring to Document No. 306, line 23, the committee struck out the word "religious", and put in the word "denominational." In the same line, the committee struck out the word "taught", and inserted the word "inculcated".

There were many people who were of the opinion that the wording of Resolution No. 306 practically made our schools atheistic or agnostic, hence the change.

In line 26, the committee struck out the words "conducted according to law", believing that any institution that was not conducted according to law would be properly cared for by the Attorney-General.

In line 30, the committee inserted the words "or Federal authority or both". That was because the Agricultural College has certain relations to the United States government, and we feared that the contributions of the United States government to the college might be interfered with if we did not add those words. These words also will take care of any question of the contribution of the United States government to the Soldiers' Home.

In line 35, the committee struck out the word "public", as needless repetition.

After the word "construed", the last word in line 40, the committee struck out everything, and substituted what appears in the substitute resolution offered.

I would say, Mr. Chairman, that there may be errors of punctuation that should be corrected; undoubtedly there are. The committee, as I have said, have had no opportunity to correct the proof. If there are such errors they undoubtedly will be corrected by the committee on Form and Phraseology.

Mr. ANDERSON of Newton: I ask leave, Mr. Chairman, to withdraw the minority report. [Applause.] I think it is a matter of congratulation to all of us that we have at least reached a point of unanimity. However, I wish to say that my assent to the report is in some sense a qualified one; and, as the committee already understands it, I want the Convention to understand exactly what my assent means. It means that I will vote for the committee's amendment in the form it now bears, or in a more satisfactory form, in the final vote at every stage. I reserve my right to vote against it as soon as it is amended in a form unsatisfactory to me. I also reserve my right to support all amendments or substitutes which seem to me to improve the committee's amendment or put it in better shape. In these particulars I reserve the right to dissent.

Some object to that and say that I should have gone further. But while I was a dissenter, I was perfectly free; I did not need to go any further than I chose to go. I have gone a long way. I have gone so far as to say what I never said before, that I should vote for the Curtis amendment, for the majority amendment, and I have done this accepting the very great handicap of the hostility of friends of the private institutions which are cut off by this measure.

That is a very grave handicap. I think probably I know its extent as well as any man in the Convention. I have made a special investigation along that line. I have a long list of private institutions which will need to be more or less reorganized or readjusted if this amendment should pass. I feel that I am taking a very grave and great chance in giving my assent to this majority report. But as we go along in life, we are compelled to take chances, sometimes great chances, and I am willing to do so this morning. I cannot deny that I do it with the greatest reluctance and with the greatest doubt; and yet I have made up my mind, in the interests of harmony and good will, that I am ready to take the handicap.

Now, I have said publicly that I never should support what I then called the Curtis amendment. Why did I say that? I never gave but one great reason, either in my campaign for this Convention or in the Convention. Of course I have had subordinate reasons which I still hold, but I mean one main reason; and that is, that I was afraid that this amendment would be beaten at the polls. It will have against it all of the sincere friends of sectarian appropriations; it will have against it all of the friends of the private institutions; it will have against it all those who do not approve on any ground, theoretical or otherwise, of the new policy which this resolution, to which I have now assented, involves.

Moreover, the one thing that I felt most keenly, it had no promise of really active support. By that I do not mean to say that every member of the committee was not perfectly sincere. And, as I under-

stand it, every member of the committee is willing to make a few speeches for this amendment. But when I looked around the table in the committee-room yesterday, I wondered who would be a father to it, who would sit up with it nights, who would nurse it through the measles and the whooping cough, carry it over the rough places and finally see it "across" on election day. I asked the committee whether any of them were willing to do this but I did not get any reply except from the chairman, whose response I very highly appreciated.

Why, then, do I change and now say that I will support under certain conditions the report of the committee?

First, because it is a different report from the one which I said I never should support. It has been changed in what seem to me important particulars. I am ready to say right here, and fairly and squarely, that so far as I can see at the present time it gives to the opponents of sectarian appropriations all that they want, and consequently on that ground I have given my assent to this report.

The second reason I did this was because I knew that every day I stood in opposition to this report, which I felt that I might be called upon to support at the polls, I really was injuring its chances before the people, and consequently I changed in order that I should not play into the hands of some persons, — I will not say members of this Convention, — who are supporting this report because they want to see it killed. I did not want to play into their hands a moment longer than I possibly could help.

In the third place, I had another reason, and this was the compelling reason, a reason which never has been made known before. Without this reason I should not have been able to have signed this report. I have received from the highest quarters assurances of active support for this amendment by men who wield large influence and newspapers that wield large influence in this Commonwealth; and I felt that I could trust in the honor of the gentlemen who made me those assurances. I now think that, with those guarantees, with the unanimous report of this committee, and I hope a unanimous vote of the Convention, the handicap of the private institutions will be overcome. I think it is reasonable to suppose that it may be.

Now, as I am on my feet, I think I should like to tell the Convention in a sort of historical review something of the story and motives of the movement that has made such a discussion as this possible in the Convention. We are taking part to-day in an age-long and world-wide debate on the subject of the relations of church and State. It is a very difficult question. I never knew how difficult it was until I began to investigate. It is wonderful how many cross currents of life are involved in it. It would be a difficult even if it were not a delicate question, and it is delicate because it involves the religious feelings and prejudices and sometimes the passions of men, and, more than that, because all through this present situation run all sorts of political ambitions. I am sure, however, that all of us desire to have this question permanently taken out of politics, where it ought never to have been. The Convention of 1853 ought to have seen to that. And when we have a proper separation of church and State, it will have disappeared, and forever.

I am glad that we have such advantages at the present time in

solving this question; that we have in this Convention the beginnings of mutual understanding, which are of the very highest promise for the future of this State. I feel that we all agree, or almost all agree, up to a certain point. We all agree on religious liberty. We all agree on the separation of church and State, in theory at least, and I think that the great majority of us agree on the application of the separation of church and State to appropriations of public funds.

In the ancient world and in the heathen world and in Christian Europe, the custom has been the union of church and State, but even in Europe whenever countries have become republican, as in France and Portugal, they have entered almost immediately upon the course of the separation of church and State. In France and Portugal it was done in an unnecessarily rough and crude way, — but nevertheless it was a part of their democracy, their high valuation of the individual, which compelled them to it. And if I can understand anything from the confused reports that come from Russia, I believe that the separation of church and State already is in process in that new republic. Republicanism and the separation of church and State necessarily go together.

It is the glory of the Commonwealth of Massachusetts that on its soil Roger Williams, away back in 1636, proclaimed this doctrine of religious liberty, — religious liberty for the other man as well as for himself. On account of his denial of the right of the State to compel any act in the sphere of religion, — not because he was opposed to religion, but because he felt that religion was a personal matter and that voluntary religion was the only religion worth talking about, — the Commonwealth of Massachusetts, whose history in this matter, as I shall show, has not been such that we can be proud of it, banished Roger Williams at the beginning of winter, and if the Indians had not been more kind to him than his Christian brethren he would have perished in the snow. He went down to Rhode Island, and there he established a State where every one had full religious liberty; and such a motley crowd of Turks and Jews and Baptists and Catholics and Quakers, and every sort of people with strange ideas as got together, there probably never was seen before on the face of the earth. It was the asylum of everybody who had independence enough to maintain his own opinions against his neighbors in the sphere of religion. They had a terribly hard time of it, but they held to the doctrine that every man had a right to think and act as he pleased in the sphere of religion, without any State compulsion.

When the United States formed its Constitution it followed the lead of the State of Rhode Island, influenced also by the toleration which was found in Maryland and Pennsylvania, but refused to imitate the other Colonies, which had State churches. Consequently, we find in the first amendment to the Constitution of the United States the words:

> Congress shall make no law regarding an establishment of religion, or prohibiting the free exercise thereof.

Now, with Roger Williams out of the Colony in 1636, there still remained people in Massachusetts who wanted to live here and yet wanted to have and to speak their own opinions on the subject of religion. The result was that for more than a hundred years, up to

the time of the Convention of 1780, there was constant agitation and religious persecution in this State. Quakers were hanged in this city because they were Quakers, and Baptists were whipped in this city because they were Baptists, and Episcopalians and Catholics and Presbyterians and every other kind of folk were persecuted in various ways because they did not belong to the established order. This fight against the established church had gone along pretty well before the Convention of 1780 assembled, and in that Convention this was the greatest question debated. The result of that discussion was the second and third articles of our Bill of Rights. I have heard recently some distinguished men quoting the third article as though it was part of the law of the State, but it has long since been repealed and amended by the eleventh amendment to the Constitution. A more involved, uncertain and inconsistent article is not to be found in a State Constitution than that third article of the Bill of Rights. It simply shows how small progress our fathers made toward settling that great question in the Convention of 1780.

The agitation continued, because very little after all had been gained by that third article, and in the Convention of 1820, again, this was one of the principal questions debated; and an amendment, which went much further than the third article of the Bill of Rights, was put before the people and was beaten by them.

However, there had been so much interest stirred up in this matter that in 1833 an amendment was passed by the Legislature and the people, which finally, in the most grudging and back-handed manner, abolished the State church in Massachusetts.

That was the result of the labors of 150 years. Some of you think that this agitation which we have witnessed in this State, which has gone on for over 17 years, is long; but I assure you, gentlemen, if you do not settle this question now, some of us, like our fathers, are ready to go on with it for our natural lives and hand it down to our sons and grandsons.

I might say right here, bringing it in perhaps a little illogically, that there are three or four stages in reference to this matter of the relations of church and State. First, there is the union of church and State, where the State supports the church to the extent that it persecutes, forces and compels all those who do not do as the State and the church have agreed shall be done in the sphere of religion. Then comes the next stage, where the State and the church say: "Our laws are right, you ought to obey them, but you are so stiff-necked that you will not, and consequently we will allow you certain privileges." That is toleration, which every red-blooded man spurns. Then we come to religious liberty, when it is conceded by everybody that everybody else, so far as the State is concerned at least, has a perfect right to think and to act in the sphere of religion as he pleases; and this religious liberty, mind you, never can be guaranteed except by the complete separation of church and State.

This separation of church and State is of two kinds, however. In some countries, — and I think that many of us could think of such countries at the present time, — it is a separation where the State is hostile to the church, and where the State practically persecutes the church in some particulars because it is hostile to it. But the other kind of separation of church and State is that which we have had in

America, which we have enjoyed for a hundred years with the greatest satisfaction both to the State and to the church, — a friendly separation, — where the State is friendly to the church and the church is friendly to the State, where they keep their affairs apart for their mutual benefit, and yet coöperate for the highest good of the people.

Now, in the Convention of 1853 this question came up again. Why? Because the matter of appropriations, of the use of money, had not been settled. This question of sectarian appropriations is a question of religious liberty. Religious liberty says that the State shall compel no act in the sphere of religion; therefore the State cannot compel a man to pay his good money in taxation for the support of a religion, or of the schools and institutions of a religion, in which he does not believe. It is intolerable that the Catholic, for instance, in this State, should be forced by the State, as he too often has been forced in the past and as he still may be forced under the present Constitution, to pay his good money in taxation for the propagation of the Protestant religion in the schools and institutions which that religion has established; and it is equally intolerable that the State should force a Protestant to pay his good money in taxation for the support of the institutions and schools in which the Roman Catholic religion is propagated; and it is equally intolerable, — I say equally intolerable, — that the Jew or the agnostic should be forced by the State to pay his good money in taxation for the support of institutions in which either of these forms of religion is propagated.

Now, the Convention of 1853 attended only to the matter of public schools. How well they attended to it may perhaps be brought out later in the debate, and I will not debate that now. But the question concerning higher institutions of learning, societies and undertakings, certainly was left open and consequently the matter comes before us again in 1917.

About the year 1899 or 1900 a group of men in this State made up their minds that this thing ought finally to be put right. They had good reasons for their movement at that time. All they had to do was to look around them and observe what was going on in the States of New York and Pennsylvania, in order to see what very soon would be done here, if the matter was left wide open. Consequently, they joined together for the purpose of putting this great principle of religious liberty, guaranteed by the separation of church and State, in the matter of appropriations and taxation, into the Constitution of Massachusetts. They were high-grade men who did this thing. Their leader was Professor Henry S. Nash, of the Episcopal Divinity School in Cambridge, and men of that sort. After a while they drew about them some of the very finest men in this State. Of course they had an organization, and I want to say something about that organization, as it has been very much slandered and very much misunderstood.

I wish to say, in the first place, that it is not a secret society in any way, shape or manner; and in the second place, that it has no dues, that the members never have paid a cent, and that the officers never have received any money; and that those who have done the work of the movement have sacrificed, — some of them have sacrificed all they had, some of them have mortgaged their future, — in order that this great principle might be put into the Constitution. I want to say, too, that it is not an A. P. A. society. The distinctive principle of the

A. P. A. is that a Catholic, holding allegiance to the Pope, cannot be a good American citizen. We absolutely repudiate that sentiment. We do not believe it at all. We do not believe in discriminating against our friends of any sect or creed because of their religious views or feelings. That never ought to be taken into consideration, it seems to me, when a man is running for public office in this State. I have had the great privilege of voting again and again for my friends of the Catholic faith, and when this Convention was chosen, I voted for one man, and I think I voted for two of that faith, to represent me here.

Now, I want to have you understand thoroughly the character and animus of this movement. It has been a high class movement. It has been a movement whose motto has been "Speaking the truth in love;" and we feel that we have been justified in all that we have done; that on the whole, — notice what I say, — that on the whole the results of the agitation have been helpful; and there is no State in the Union at the present time which so thoroughly believes, I think, in religious liberty and in the separation of church and State, even so far as sectarian appropriations go, as this State, just because of this agitation.

We introduced into the House of Representatives an amendment to the Constitution whose first sentence reads:

> No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof.

That is part of the first amendment to the Constitution of the United States. We put it in because the Commonwealth of Massachusetts in 1789, dominated by the State church, rejected that first amendment to the Constitution, along with Connecticut and Georgia; and we thought it was only a right atonement at this late day that this State should place that amendment in its own Constitution:

> No law shall be passed respecting an establishment of religion or prohibiting the free exercise thereof, nor shall the State or any county, city, town, village or other civil division use its property or credit or any money raised by taxation or otherwise, or authorize either to be used for the purpose of founding, maintaining or aiding by appropriation, payments for services, expenses, or in any other manner any church, religious denomination, or religious society or any institution, school, society, or undertaking which is wholly or in part under sectarian or ecclesiastical control.

I thought during my campaign, and I still think, that that is a perfectly plain amendment. It has a single purpose. Any man who runs can read and see what it means. There is nothing unfair in it, I am convinced, after the most thorough consideration of that matter. I was surprised to hear from a friend of mine, an opponent of this amendment, that a certain church thought that the words "sectarian or ecclesiastical" were aimed at it. I wonder how that possibly could be. They thought that that was an insult, and an intended insult. I wonder which word contained the insult. Was it sectarian? Why, certainly that great church is not sectarian; no one ever supposed that it was. Is it ecclesiastical? Certainly that great church is ecclesiastical; but there are other churches that are ecclesiastical, — all churches are ecclesiastical. No insult was intended.

It is perfectly fair. It gives to everyone all his rights before the law, as it seems to me. Still, we are not debating that amendment and we do not need to go any further to show the spirit in which we have come to this place.

But I want to state our arguments for the anti-sectarian amendment, which is now a feature of the majority report. First, it safeguards religious liberty in taxation. I already have explained that. Next, it takes the last irritating, debatable question out of politics. Third, it safeguards the independence, spirituality and dignity of the church, — it is just as good for the church as it is for the State. And, lastly, it saves the State an unseemly scramble of religious bodies for public funds. I am sure members of the Legislature here will agree with me that that would be a calamity to the State to have all of the religious bodies of this State scrambling here, as they do in Pennsylvania and Maryland, for the public funds.

I make these remarks in this extended way simply to show you the spirit in which we have come to this Convention. We have come in the spirit of accommodation. We have made every possible compromise. The compromise that we made yesterday in the committee, and which we have ratified this morning, is a compromise which goes further than some of those who have stood with me have thought was right or wise. I have taken the responsibility upon myself to make it, with the greatest reluctance, and yet just because I hope that the time is coming in this State when all those who have religion of any sort, and those who have no religion of any sort, will treat each other with the highest respect and with mutual helpfulness. [Applause.]

Mr. PARKMAN of Boston: Before the gentleman from Newton (Mr. Anderson) entered into this historical discourse, which was most interesting, I understood him to say he was afraid this amendment might be opposed at the polls by friends of private institutions who are cut off in some way or other from assistance which they had had either from the State or from other sources. Now, as representing one of those institutions, the Massachusetts Charitable Eye and Ear Infirmary, which has received for many years great help from the Commonwealth of Massachusetts, I want to say, simply, for the friends of that institution, that I believe they will heartily support the amendment as offered now; and I want to say that I further believe that friends of other private institutions will put patriotism above other things, and vote so as to remove any religious or sectarian questions outside of future political discussion. [Applause.]

Mr. CALLAHAN of Boston: As one of the very obscure members of this committee on Bill of Rights, I rise at this time to extend my congratulations to the gentleman from Newton (Mr. Anderson) though he has succeeded so beautifully, Mr. Chairman, in congratulating himself for his attitude that I think it is unnecessary now.

I want to speak, Mr. Chairman, for a few of the members of that committee, who went there with absolutely no prejudices, and were ready and willing at all times to accept anything that would be agreeable to all the parties concerned. One day, when the gentleman from Newton (Mr. Anderson) said that his proposition was going to save the Commonwealth a whole lot of money, I asked him to explain that vague statement, and he said he preferred not to do it, and the chairman of the committee, in his fatherly sort of way, came and asked me not to urge the question, that perhaps it might cause some trouble. And then I was told that the aim was not to stir up any religious discussion and not to fan any religious prejudices, and that was a thing that appeared very commendable to me; and that was the thing more

than anything else which made it possible for this committee to bring in a unanimous report, because those of us on that committee who held different views from the gentleman from Newton felt a certain insult, because this question never before had been approached properly. When it was approached properly, when they did not make any insinuations, when they did not make it appear that certain people and a certain element in the community were a menace, then we agreed absolutely with them on this proposition; because there is none of us, no one in this Convention, who would dare suggest that there be a union of church and State in these days. We all of us subscribe to that doctrine of separation of church and State, and every one of us, Mr. Chairman, believes that there should be fair play and everybody treated alike. And when the gentleman from Newton came into that committee, and with all the skill of a German diplomat, if you will, got everything that he wanted, and which we gave willingly and not grudgingly, he then assented to this proposition. I think it is a splendid thing. I think that the gentleman from Newton ought to go further than he has, and say that he will urge this measure all the way through the Convention.

Now, Mr. Chairman, he asks who will support this thing before the people, who will sit up nights with it, and who will carry around the nursing-bottle? Why, if we on that committee, and we here in this chamber, publicly advocate this proposition, does he mean to say that we shall go out afterwards with a knife in our hands and stab the proposition in the back? Certainly not; we are not built that way. We shall support this thing all the way through. I take it he wants a public statement to that effect, and I gladly give it here upon this floor, Mr. Chairman; and not only I, but the other members of that committee, and the men whom we know and the persons with whom we are intimate, will support this thing, because we believe on the whole it is a good proposition, and if it had been approached properly and decently in the past few years it would have received this same support.

Now, I believe absolutely in this proposition. I started out with the belief that the public money not only should not be dealt out to sectarian institutions but that it should not be given out indiscriminately to private institutions. The proposition as I saw it, Mr. Chairman, was whether or not this Convention believed that public money should be spent for private institutions of any kind; not, as some members have said, whether there should be money refused for sectarian purposes and yet given to other private purposes, because that is another division of it. The real division, the real question, is whether public money should be spent for private purposes, whether they are sectarian or not. I think that with the exemptions that this committee very wisely has made, exempting the Soldiers' Home, exempting perhaps the Agricultural College, which after all needs no exemption, and then making a wise provision for the contracts with different private institutions in the case of the care of the sick or needy, — I think those are the only exemptions necessary, and as one of the members of the committee I urge this body at this time to vote down all these amendments that go to the spending of public money for private institutions.

I personally sympathized very strongly with the young man who

appeared before our committee yesterday, who was the principal of a school in a town in the western part of the State. He was the finest kind of a young man, and I think he is a member of the body here. He was the principal of one of those schools which takes the place of a high school in these small communities. He does splendid work and he is a fine American. There is not a bit of bigotry in his whole make-up. He no doubt is bringing up those boys and training them finely in that town, and if all schools were like his perhaps we should have no objection. But, Mr. Chairman, in those schools, which take the place of high schools, where the towns when they are supposed to maintain a high school refuse to do it and send their students to these private schools, they have religious exercises. They are not sectarian, certainly not, but they have religious exercises that we do not have in our public schools, that we do not have in our high schools, and that we would not tolerate for one moment. I sympathize with him, and personally I should like to exempt these schools, just as we exempt libraries in towns where they have no public libraries. But we are going too far. We are going too far afield when we do that. We have to draw the line somewhere, and I think that this committee very wisely has drawn the line, and that they ought to be sustained here in this body. [Applause.]

Mr. WASHBURN of Worcester: I desire to offer an amendment, which I will place in the hands of the Secretary.

The CHAIRMAN: Mr. Washburn of Worcester offers an amendment which the Secretary will read.

The Secretary read as follows: Add at the end of the resolution the words "The General Court may make appropriations for scholarships in technical and engineering schools in which State scholarships now exist."

Mr. WASHBURN: It is with a feeling of very great reluctance that I rise to suggest an amendment to this measure. When the gentleman in the first division (Mr. Edwin U. Curtis) and the two distinguished gentlemen in the third division (Mr. Anderson of Newton and Mr. Lomasney) are able to agree upon any proposition as important as this, it would seem to be *prima facie* evidence that no change for good could be made in the measure. But, Mr. Chairman, in full accord with the purpose had in mind by the committee reporting this measure, with an earnest desire to see this sectarian question settled for all time, realizing fully the importance of not suggesting any ground here upon which a difference of opinion might arise, I deem it my duty, in this informal discussion by the Committee of the Whole, to call attention to some important considerations which I think have been overlooked in the discussion of this question, — at least, I have not heard them referred to.

In beginning my remarks, which will not be long continued, I should like to quote from chapter 5, section 2, of the Constitution, in which the Legislature is enjoined to encourage "private societies and public institutions for the promotion of agriculture, arts, sciences and commerce, trades, manufactures;" and in this connection I call the attention of the committee to the fact that the prosperity of Massachusetts depends upon the success of our great industries. No amendment or suggestion was made until 1855 touching the question we now have under discussion, and then the amendment familiar to you all was made to the Constitution.

I take it that what has precipitated this discussion at this time is the opinion given by the Justices of the Supreme Judicial Court to the Senate and the House of Representatives, 214 Mass. 599, in which they said that it was still open to the Legislature to make appropriations for higher educational institutions under sectarian or ecclesiastical control. With the general purpose here expressed, to make impossible appropriations to sectarian institutions, I am in entire accord. As to the other proposition, whether it is well to remove absolutely from the Legislature the right to make an appropriation to an institution under private administration, I am more in doubt. I think these two questions might well be separately referred to the people. But, on the other hand, if it were to be the mature judgment of this Convention that the matter should stand as it is, I personally should have no quarrel with the conclusion.

It is not, gentlemen of the committee, to urge any fundamental objection to this measure that I rise, but rather to propose an amendment which it seems to me will strengthen it, and which will leave the Legislature in a position to act in a well defined limited area.

There are now two institutions of the higher grade in this Commonwealth receiving State aid, — yes, there are three: the Massachusetts Agricultural College at Amherst, the Institute of Technology in Boston, and the Polytechnic Institute in Worcester, the State College of Agriculture at Amherst established in the early sixties and the other two schools established in the late sixties. They all have received aid from the State. The Agricultural College at Amherst up to this time has received over $5,000,000, and during this present year the appropriations amount to $360,000. The Massachusetts Institute of Technology has received a much smaller amount, and the Polytechnic at Worcester a still smaller amount.

The Massachusetts Institute, in 1911, received an appropriation of $100,000 a year to continue for ten years, and in 1912 the Polytechnic Institute at Worcester received an appropriation of $50,000 a year to continue for ten years. As I view the proposition, Mr. Chairman, those were contracts between the institutions and the Commonwealth, because in each was recited a consideration upon which the appropriation was made. The consideration was that in the case of the Massachusetts Institute of Technology eighty free scholarships should be maintained, nomination to which should be made by the Board of Education, and the further consideration that within a specified time an additional increase to its endowment should be secured, and both conditions were complied with, which, as I view the proposition, established a contract between the Commonwealth and the Massachusetts Institute of Technology, in accordance with which that appropriation should be continued for a period of ten years. Like conditions prevail between the Commonwealth and the Polytechnic Institute at Worcester, with the single difference that the amounts involved were less, because the appropriation was smaller, as was the institution.

My amendment is directed to this proposition, namely, that when the period elapses for which these appropriations were made, and when it is beyond the power of the Legislature, if this amendment to the Constitution be adopted, to make any grants to these institutions, when this amendment will absolutely put an end to these free scholar-

ships, 120 a year, involving the fortunes of 200 or more needy students, — for these scholarships are divisible, — that when that time arrives the Legislature shall have the right to make appropriations for scholarships. And why do I desire that amendment?

Why, gentlemen of the committee, I am not here, particularly at this time, to depreciate the value of the industry of agriculture, I am not here to criticize, far be it from me to condemn, the great appropriations made to this industry, involving an output of $70,000,000 a year in normal times; but what I do plead for is this: That with our great industrial enterprises, dependent for their success upon our mechanical engineers, our electrical engineers, our civil engineers, our physicists and our chemists, the needy youth of this Commonwealth seeking advancement in those channels shall not be absolutely cut off. Adopt this measure as it stands, and you deprive them of the opportunity to secure an industrial education. The industrial output of Massachusetts this very year is over $1,600,000,000, over twenty times the output of products of agriculture, and yet while you leave the Legislature free to make these great appropriations, of which I do not complain, to the Agricultural College at Amherst, you cut off absolutely all these scholarships that have existed heretofore in connection with these great engineering schools. What will follow as sure as the day follows night is that those adversely affected are going to cry out in indignant protest against this discrimination, and are going to demand a State University.

I know that the establishment of a State University has some adherents on this floor, and this suggestion may be an argument to them why this amendment of mine should be killed in order to make imperative the demand for a State University. Personally I do not believe that we need a State University in Massachusetts. I would prefer to see the State take advantage of the institutions now in existence as far as they can be used. But I say to you that if you shut the door absolutely in the face of this demand on the part of our young men for assistance in securing a technical education, you will throw wide open the door to the demand for the establishment of a State University.

I consider it, Mr. Chairman, entirely appropriate that in the informal discussion of these matters in the Committee of the Whole I should bring these considerations to your attention. I do it in no hostile spirit to this measure, but I should like to preserve in the Legislature the power to avail of these great engineering schools already availed of to so large an extent for the education of the young men of this Commonwealth in those pursuits which have made the name of Massachusetts preëminent as a manufacturing State throughout the world.

Mr. Pelletier of Boston: The last speaker has made some comparison between the Worcester Polytechnic Institute and the Massachusetts Agricultural College at Amherst. I should like to ask him if he is aware of the fact that the Massachusetts Agricultural School is a State institution, that it conveyed to the Commonwealth all of its property several years ago and is to-day subject to exclusive State control.

Mr. Washburn: In reply to the question of the gentleman in the second division (Mr. Pelletier) I will state that he has conveyed to me

no information of which I was not already in possession. I fully appreciate that fact. I do not see, however, that it is at all relevant to my discussion. I was not condemning the Agricultural College at Amherst, I was not disputing the right of the Commonwealth to make the appropriations, I was not disputing the wisdom of doing it; but I used the Massachusetts State College, and I referred to it in that way several times in my remarks, to emphasize the fact that under this measure it is most appropriately left in the hands of the Legislature to make any appropriations it may choose for the industry of agriculture, and the Legislature is absolutely prevented, excepting through a State University, from making any provision for technical and engineering education.

Mr. PELLETIER: Is there any legal or constitutional reason why the Worcester Polytechnic Institute could not give itself to the Commonwealth, to be run as the Agricultural College at Amherst has been run and is being run?

Mr. WASHBURN: Without examining all of the deeds of gift under which the Worcester Polytechnic Institute has received its various benefactions, I cannot answer the question which my friend has asked; but I will say this: That if it were possible, and if such a course as that would be of advantage to the Commonwealth, I feel that the management of that institution would not shrink at all from making the transfer which my friend has suggested.

Mr. EDWIN U. CURTIS: I am glad, Mr. Chairman, that the committee has given this Convention an opportunity to hear the brilliant and skilful orator from Worcester, whose eloquence can make black appear white; but let us get down to the facts.

The great school of technology, the Massachusetts Institute of Technology, has never sent a representative to appear before this committee at any of its hearings. Neither has it asked, as far as I know, any gentleman of this Convention to appear before the committee or to say one word in its behalf. Therefore, gentlemen, discard at once from the eloquent orator's talk everything about the Institute of Technology. The Agricultural College in Massachusetts, I stated the other day, was taken over by the Commonwealth of Massachusetts in 1911. Only yesterday the committee added words to its resolution to save any question of its Federal donations, as I explained early in the day. Therefore, gentlemen, the Agricultural College was put into his eloquent remarks that you might think that school was interested. It is not interested; it is a State institution.

Now we come down to one institution, the Worcester Polytechnic Institute, the only one that he attempts to reach by his amendment. If I am not mistaken, his argument to the committee yesterday was that the State was bound by contract with that institution, and, gentlemen, I so understand that the people who are running that institution now claim. If the State is under contract with the Worcester Polytechnic Institute, there is no member of this committee who desires that the State should break its contract, and nothing that we could write into this resolution, and nothing that this Convention could do, would in any way impair that contract, if there is such a one.

I turn to the Constitution of the United States and read you this: "and no State shall pass any bill or law impairing the obligation of

contracts." No law, gentlemen, that you could pass would do that. But he shifts his ground to-day, and now he comes and asks what? He asks for scholarships, — no limitation on the scholarships, — to all schools in which they now exist. He does not limit the number. He does not limit the time.

Gentlemen, we have asked you to adopt here a great principle, a principle that we no longer shall pay money, or allow money to be paid, to private institutions. If you are going to make exception here and there, then we might as well pass nothing; we might as well do just as the 1853 Convention did. Then we would not have improved the ground at all. If you load this resolution down with exceptions, the resolution will be no good when it goes before the people.

I want to say that I agree to all the great work done by these great institutions; I agree that they send out young men who are an honor and a credit to this Commonwealth, and, gentlemen, I believe that they will send them out just the same after this is passed, and go on forever.

Why does he not stand up like the gentleman from Boston (Mr. Parkman) and say that his institution is hurt, and although it is hurt his people will go out and support this resolution? That is the right way to meet this thing.

Mr. Lomasney of Boston: I voted for this proposition when it was before the Legislature and I fought for it, and I want to take it out of the Legislature. You see the ability of the gentleman, and you will realize, when men of his capacity approach Legislatures to do the things they wish to do and the wires they work with, how hard it is to resist them. Now, sir, what is this proposition? It is to make an exception in favor of this institution, which already has taken $575,000 out of the taxpayers of this State. Many young men have benefited by it, it is true, but the people have been taxed for it, and what has Massachusetts got to show for it, — I mean in dollars and cents, — to-day? Nothing. Now, sir, as the gentleman from Boston (Mr. Edwin U. Curtis) said, if the gentleman from Worcester (Mr. Washburn) would coöperate with the fair-minded citizens of this State, he would rise to-day, and, speaking for the Worcester Institute, would say, as George F. Hoar, one of its founders, would have said: "Let us abandon the present custom in the interest of the State at large." If the gentleman from Worcester will come forward and convey to the Commonwealth of Massachusetts this institution, and go forward and educate Massachusetts' sons at the expense of Massachusetts, then open it to Massachusetts' control and not private control; then, Mr. Chairman, all men of intelligence will commend his action. It is a wrong thing to have a private school of that kind in any city or in any county or in the State, where you may take the poor boy or the rich boy and give him an opportunity for advancement at the public expense, to which every young man in the State has not access. To-day they have the power to dictate who shall go there to be educated, and the public contribute in part the moneys that support the institution. That is all wrong. We never should make a special educated class in this Commonwealth. Millions of the people's money have been taken in this way, — legally to be sure, but improperly. There can be no question about it. Five hundred and seventy-five thousand dollars is what they have taken

out. The total taken out for educational purposes since 1860, according to document No. 17, is $10,133,159.40. This institution has taken out over half a million. Would they not show the proper spirit if they were to convey it now to the State? So long as they do not show that spirit, let us do the proper thing for Massachusetts and let them stand on their own bottoms. Then they may come in and do what the Massachusetts Agricultural College has done, and what Mr. Parkman says the charitable institution he represents will do.

They say they have a contract now. It is a clever contract. He is an able seaman who drew it. It is a skilful piece of work and done with great care, and if they have not drawn a document that will stand, they are to blame. However, do not let us ratify it; do not let us repeal it; let them stand on the contract just as they made it. That is the proper way to do. The gentleman came before the committee pleading for the contract, but I believe he misunderstands the temper of this Convention. In the old days, when he was fighting for Congress against John R. Thayer, and when he was getting all those salaries John R. Thayer claimed he was, — Thayer in speaking to the hardy yeomanry of Worcester said he was getting $60,000, — Thayer said: "Charles G. Washburn is now getting $60,000 in various salaries, and now he wants to take the $5,000 salary away from poor John R. Thayer. Are you going to allow him to do it?" And they said, "No." Let the Convention now say to the skilful appeal of the gentleman from Worcester: "Well done, good hearted, intelligent, capable son of Worcester. We recognize your integrity and we glory in your good work. But Massachusetts feels that you have had your day at the public treasury, getting money for a private institution, when the whole State now wants to stop it in the interest of all the people." [Applause.]

Mr. WASHBURN: I am glad to have won from the gentleman in the first division (Mr. Edwin U. Curtis) some slight measure of commendation, which is really more than I had dared to hope. I believe that he means to be fair. When he condemns me for referring to the Massachusetts Institute of Technology in connection with the argument I am making, I want to say to him that only yesterday, before I went before his committee, I was in consultation with a friend and supporter of the Massachusetts Institute of Technology, whose name I am not at liberty to mention but which carries great authority in educational circles, and he told me that while he was in accord with the general principles of the measure he felt it would be a very great mistake to deprive the Legislature of the power, if it should choose to exercise it, of maintaining these scholarships. My friend does me a personal injustice and misrepresents the facts when he suggests that I have intimated in any way that I should oppose this measure. I was very careful to say that I was not attacking the fundamental character of the measure at all; I was suggesting an amendment that I believed would improve it. And now, moving to the antipodes from my friend in the first division (Mr. Curtis), and approaching my friend in the third division (Mr. Lomasney), oh, what must be the merits of a cause that could bring these two choice spirits into complete accord. [Laughter.]

The CHAIRMAN: The committee will be in order.

Mr. WASHBURN: Why, the gentleman from the third division (Mr. Lomasney), in spite of what he says, and what is more awful, in spite

of what he looked at me, has been my friend for twenty years, since we served together here. I was in the House; I think on that particular occasion he was in the Senate. He gave me great assistance when I had a hand in securing for the Worcester Polytechnic Institute five years ago this appropriation, and I never have failed to express to him when we have met my appreciation of the great service that he rendered. [Laughter.] He was a member of the Ways and Means Committee, that committee that sits in inquest upon all those who seek to ravage the treasury of the Commonwealth, but I hardly had stepped within the portals of the committee-room when he fell on my neck and said: "Washburn, whatever you want is yours." [Laughter.]

Mr. LOMASNEY: The gentleman told the Convention that I voted for this measure, and in view of the gentleman's own statement, you see where you are going to be if you continue to let the bars down. [Laughter.] For if an old veteran like myself would do what he says, which, of course, is somewhat doubtful, — you know that I would hesitate a long time before I would throw my arms around the gentleman, because I know him well, — I should be afraid he might call for the police. [Laughter.] But, speaking seriously, this is one of the dangers. These large institutions have powerful weapons to work with. I do not want to criticize the Massachusetts Institute of Technology or any one of them; but when they start for the public money, corporation influence is nothing to it. If ever you had a friend who had done you a favor, he is reached. He is after you night and day. And with this power in their hands, the bars go down. You yield, — not for money, not for promises, but to these influences. If you have a note at a bank, you are reached and you are asked to support the institution. If you have a contract, you have an engineer over you; you are asked by the engineer to favor the proposition. And so on down the line. That has been the trouble in this situation. You will find, sir, that in 1899, when the first real protest was made against any of these appropriations, the State had spent only $5,844,274.30 from 1860. But from 1899 down to the present, it has spent over eleven millions; and that after thousands of people in this State had filed a protest against giving $10,000 in the name of charity to the Carney Hospital, a private institution.

Now, Mr. Chairman, I am not going to mince matters. You cannot make any exemptions. You cannot make a concession to his institution, for, while I do not say it offensively, it has received altogether too much money. It should in decency convey this property to the State, if it wants to be aided longer, and let the doors be opened to all the sons of Massachusetts, — not to the select sons of Massachusetts whom he and the board of trustees may designate. It still wants to select the students; but why should the son of a poor mechanic toiling in the mills in Lowell be taxed so that the son of his uncle or his brother could be educated as an engineer and always be capable of earning five or ten thousand dollars yearly, while the son of the mechanic never could get over one thousand? It is class legislation, it is improper legislation, and in this spirit and in these times the Worcester Polytechnic Institute should not be exempted. And, sir, I cannot close without calling your attention to his audacity in asking not that the present measure shall stand for a few years, but that it be allowed to run forever. If we do that, what does our work here

amount to? How can you now justify giving more money to this institution that has so many rich public men interested in it? The gentleman himself could give twenty-five or thirty thousand dollars a year and not feel it. At any rate, if it has done this work for years for these young men, give the institution to the State now or support it yourselves; but do not tax other men for it. Mr. Chairman, you see what they are now trying to do, not asking for the contract, because, if there is a contract, it should not be broken; I would not repeal it, I would not ratify it. If there is a legal contract, let them stand on it. Pass this amendment, and let the courts or the proper authorities adjudicate and confirm them in their rights if they have any; but do not let us give them any vote such as he now requests.

Mr. Logan of Worcester: If I might be permitted just one word, to say that last year the gentleman from Worcester (Mr. Washburn) contributed toward the funds of the institution for which he speaks $60,000 of his own money. [Applause.]

Mr. Bauer of Lynn: I have listened with a great deal of interest to the discussions this morning on this whole matter, and it seems to me that the amendment offered by the delegate from Worcester (Mr. Washburn) is an amendment that is both wrong in principle and wrong in practice and should not be adopted by this Convention. Every man here knows that when it comes to a question of disposition of the free scholarships that are made available by State appropriation they are not always allotted to the needy boy, or to the deserving boy, or to the boy whose parents cannot afford to send him to the institution; they are very often placed because of political expediency. Even our State commissions, which sometimes have the final say on the allotment of those scholarships, are not indifferent to the influences of political expediency, as I personally know. Any boy in this Commonwealth, if he has the right stuff in him and is determined to fight his own battles, can to-day work his own way through the Institute of Technology or the Worcester Polytechnic Institute or any other institution in this State, and those boys who do it in that way are a far greater asset to this Commonwealth than boys to whom have been allotted scholarships under those conditions under which they have been given out in this State during the past few years. Many of the boys who get these scholarships, most of them who get these scholarships, do not remain in this Commonwealth and make this place the home of their life's effort, and Massachusetts in no way gets back very much for that kind of an investment. As I already have said the boy who has the right stuff in him always can make his own way through the Institute of Technology or any other institution in this Commonwealth and be a more useful citizen, not only to this State but to every other State in the Union. I hope the amendment of the delegate from Worcester (Mr. Washburn) will be voted down, because of the statements made objecting to it.

Mr. Cummings of Fall River: When the resolutions prohibiting the appropriation of public money and public property to private institutions were referred to the committee on the Bill of Rights we knew that the committee was called upon to consider one of the gravest questions, certainly the most delicate question, that would come before this Convention. We have anxiously awaited the report of that committee, and the enthusiasm with which the Convention to-day received the announcement that the committee had unanimously

agreed to report an amendment to the Constitution intended to settle the question, certainly is calculated to discourage all opposition. In rising to oppose the report then, I am not unmindful that I shall be heard with impatience, and yet I venture to ask you to reëxamine this question in the light of indisputable facts, believing that you will conclude that the answer has not yet been found. If we could be sure that there was any call from the people to take up this question and that our decision would be accepted unanimously or with substantial unanimity by the people, then we should submit the resolution reported by the committee. The best reason that has been given for bringing this question into the Convention, and the only reason that could be given and induce men to consider the question at all, is the promise that if we deal with it now in the line of this resolution we shall settle it forever. Well, if someone here can give substance to that prophecy that we can be sure that a question which springs from religious differences, the atmosphere of which is charged with trouble and with danger, can be settled by anything that we propose to do, then in God's name let us do it; but we have no assurance that the amendment we offer is wanted, and we have every reason to believe that it will provoke bitter public discussion.

Everyone knows that this is a difficult and dangerous question. It lights up too easily; the fire already has been kindled, and although it has been kept under control remarkably well, yet no one doubts that the fire is still here. Do we believe that by scattering the brands throughout this Commonwealth from Provincetown to Pittsfield, for that is what we do when we submit this question for public discussion, we shall extinguish the fire? Have we not reason to fear that we shall enkindle others that cannot easily be extinguished? It is said that a Bishop of the Church of England going to his death at the stake reminded his executioners as they were about to apply the torch that they were kindling a fire in England that day that they never could put out. I am afraid we are lighting that kind of a fire.

Did you notice the impressive words of the gentleman from Newton (Mr. Anderson) when he said that we shall have arrayed against us in public discussion all those who believe that it is unjust to deal with this question this way, — all those who believe that appropriations for schools in which religion is taught are not necessarily a bad thing, and many others who would protest and resist the adoption of this resolution? If this is true, if what he predicted shall take place, we shall have these fires of religious discussion lighted all through this Commonwealth.

Let us not forget our office. A Constitutional Convention does not enact laws, it proposes constitutional amendments to the people for adoption. It is obvious that we do not settle any question, but we take the responsibility of submitting questions to the people for settlement. We leave the debate, discussion and decision to the voters. It is imperative, therefore, before we propose any amendment to the Constitution that we should have convincing reasons to believe that public opinion requires the submission of the proposed amendment, or that it can be submitted safely without fear of causing serious differences and divisions among the people. We are not even enacting a law that temporarily at least settles something. The people must take such a law, but they have the opportunity from year to year to amend

it as legislation is tentative and experimental. The people put up with bad legislation because they have the hope that at the next session of the Legislature the law will be repealed, but we are recommending to the people to put something into the organic law, something that cannot easily be changed, something that if it is wrong or believed to be wrong by a large number of our fellow-citizens will be a source of perpetual trouble and strife.

Now, before I speak of the provisions of this report that make for trouble, let me speak of two that are satisfactory and that make for peace. The first is the opening clause of the resolution which paraphrases the first article of amendment to the Federal Constitution relating to religion. The gentleman from Newton (Mr. Anderson) stated it accurately. It says that Congress shall not make any law relating to the establishment of religion or prohibiting the free exercise thereof. I am not stating it so accurately as he did, but that is the substance of it. To that I give my unqualified assent, and I beg of this Convention to remember that from the adoption of that first Article of Amendment in 1789, for a period of now nearly one hundred and thirty years, that provision has been adequate to secure religious liberty under the government of the United States, and to protect the Nation against the union of church and State.

In the next place, I believe that a proper subject for the consideration of this Convention is the question upon which the Justices of the Supreme Judicial Court divided when it was submitted to them. Four members of that honorable court were of opinion that no amendment was necessary to restrict or prohibit the Legislature from appropriating public money in aid of any church, religious denomination or religious society, and three of the Justices were of the opposite opinion. This disagreement of the Justices shows that there was a doubt about the authority of the Legislature. It may be advisable to have that doubt removed; and it is removed by this measure, for in the last part, in the part that was reformed this morning, there is an absolute prohibition on the Legislature from granting or appropriating public money to religious institutions. The subject is dealt with exactly as it was submitted to the Justices of the court. It is completely, conclusively and finally dealt with. In this respect the resolution declares the will of the people for the complete separation of church and State, and a complete and absolute prohibition of grants and appropriations for religious purposes. There is no difference of opinion in this Commonwealth about that policy, and if the report from the committee had stopped there I should not oppose its adoption.

Let me say a word further about the work of the committee. I sympathized with the members in their labors. I shared their belief when I came to this Convention that the question referred to them could and should be answered. I read the resolution offered by the gentleman from Boston in the third division (Mr. Lomasney). I had opportunity to examine it and carefully inquired into it, and I confess that it seemed sufficiently comprehensive and fair and in all respects adequate to prevent the appropriation of public money to private institutions; but I found as I got closer to the subject that there were the insuperable difficulties that attach to disputes growing out of religious differences, which, as the gentleman from Newton (Mr. Anderson) said, have come down through the ages, and which

are rarely susceptible of human settlement. The best thing we can do with them is to leave them undisturbed.

Now, as to the provisions of the resolution that are and will become a source of trouble. Plain speech is not necessarily offensive speech, and if, in attempting to be clear and state plainly the objections that I have in mind, reference is made to religion that irritates some of my colleagues, I beg them to remember that I do not intend offence. In the first place, let me say that I have no authority to speak for the members of any church; I have no right to speak for the high authority that the gentleman from Newton (Mr. Anderson) spoke of, who gave him assurance directly or indirectly that this measure was acceptable; I have no authority to speak for any religious constituency; I speak for myself alone, and I speak hesitatingly and diffidently; but I am a Catholic layman, my life has been spent in the most intimate relations with the Catholic people, and I trust that it will not seem presumptuous on my part to say that to some extent at least I share their confidence.

In this Commonwealth the Catholics, for conscience' sake, are supporting parish schools; they are teaching in these schools all that is taught in the public schools; these schools are subject to certain superintendence and supervision, and it is a cause for deep regret that some way cannot be found to administer them as part of the public school system.

Continuing, after the noon recess: —

Mr. Cummings of Fall River: When the committee rose I was about to ask the attention of the delegates to the position in which certain of our fellow-citizens, who, for conscience' sake, feel obliged to support and maintain parish schools, are placed by this resolution. Any one who knows how burdensome the maintenance and support of parish schools is will expect to find those who assume to bear that burden, in addition to their share of the expense of maintaining the public schools, discontented, and yet they are not here asking for aid; they have not asked the Legislature for aid; they do not take advantage of a critical situation when the Nation is seriously disturbed, to raise their voices in protest against further continuance of what is to them an offensive law; and neither by remonstrance nor petition, nor by any other act, are they responsible for this resolution. They have raised no sectarian or anti-sectarian question. To-day they are expending in this Commonwealth large sums of money to support their schools. We know that the great majority of them are poor and that the burden could not be borne by them, unless relief came in a most unusual way. If the financial burden equalled the cost that would have to be paid if the same number of children was educated in the public schools, I am not prepared to say that it would be insupportable, but I doubt very much if they could bear it. But relief has come to them, as it always comes to people who make sacrifices, from sources beyond their control. As the schools increase and the burden becomes greater the number of trained teachers, men and women, who for love of God cheerfully offer their services, who are willing to teach without pay and who have no care for financial reward, increases, so that it becomes possible for the parishes to maintain their schools, at a high degree of efficiency and at comparatively low cost.

The Catholics suffer not only from the financial burden they bear but also from unjust discrimination under the eighteenth amendment. However, they hope and believe that the injustice of this situation will appeal to their fellow-citizens. Sooner or later they say our fellow-citizens will see that we are educating our children to become good citizens; that we are laying the foundation that is absolutely essential to good citizenship, teaching them the love and fear of God as well as knowledge of material things, teaching them to obey and to respect authority; and they say our fellow-citizens will soon understand and appreciate our contribution to the welfare, the safety and stability of the Commonwealth. They have a right to believe that when Massachusetts realizes the whole truth she will quickly remove all cause for complaint; and they have reached that state of mind where they patiently and quietly, without protest, and without discussion, accept the law, relying upon their fellow-citizens, when they see that it is unjust, to correct it. I think many of the Catholic people believe, certainly I do, that some arrangement may be made, and a way found, to administer these schools as a part of the public school system. The remedy may not be at hand, but it will come and it will come peaceably and amicably if we let it. Our children will know each other better than we have known each other; they will know that the prejudice of this day against the parish schools is a poor inheritance, and they will reject it.

It is one thing to bear patiently and silently with a condition of things that is burdensome, irksome and irritating, as these people are bearing it, but it is another and different thing to ask them, when we know they object to this law, to reaffirm it, to ask them again to vote for it, to ask them to deny themselves the hope of a just settlement by accepting and adopting an unjust and oppressive law. Cannot we see that when this amendment is carried to the public platform and somebody is obliged to ask the men and women who support the parish schools to reaffirm their adherence to the eighteenth amendment, he will be asking them to do something which human nature resents, and which we have no right to expect they will do? Since there is no clamor or protest from them why not leave this question alone? Is it not a significant fact, I ask you, that these people who have paid their share of the nineteen million dollars appropriated to private institutions in the past fifty years have not protested? Is it not a significant fact also that they are not here and have not been here asking for money, although their institutions have received comparatively nothing, and that the protest comes from those who represent the institutions that received the money?

Mr. Chairman, I confess that I lack the courage to go to my Catholic fellow-citizens and say to them: "I know you do not like this eighteenth amendment; I know it irritates and oppresses you; I know it leaves you bearing burdens that you should not be called upon to bear, but I ask you, although it is against your conscience, in the interest of peace to vote for it." I am not ready to do it, and I do not believe there is any power, any influence in this Commonwealth, any authority high or low that at this time can compromise the electorate and give any assurance that the people who are oppressed by that amendment will signify again at the polls their acceptance of it.

Mr. Chairman, there is still another phase of this question and that

is the one that is presented when the committee asks the Commonwealth to reverse the policy that it has adopted for one hundred and thirty-seven years. From 1780 up to the present time it has been the unchanging policy of this Commonwealth to give support to private institutions when we believed that those institutions were valuable adjuncts of our public institutions. What an anomalous situation we create in adopting this report! We have to admit that Massachusetts, for its highest school system, has to rely wholly and solely, with the exception of the Massachusetts Agricultural College, upon private institutions. We have no complete system of public education. Our system generally stops at the high school. When we look for higher education, education that the State requires for some of its citizens, we have to look to private institutions. Let us face that fact. When we come to deal with the multitude of the poor and the afflicted we have to rely in a large degree upon private institutions. Let us face that fact also. How strange it seems for an enlightened community, for an enlightened State, that it has to confess that it is dependent upon private institutions for the furtherance of higher education, dependent upon private charity in a large degree for the care of its afflicted, and yet, relying upon these institutions, dependent upon them, it turns away and says: You may help us, you may help the State, the State needs your help, but the State cannot help you. Our fathers were wiser than that. The illustrious gentleman who drew the Declaration of Rights and his associates knew that the Commonwealth needed the aid of these institutions, educational and charitable. They knew that they should foster the spirit of charity that made it possible to spread all over this Commonwealth institutions where the afflicted would be cared for. They knew that the future of Massachusetts would be secure in the charity of her people, and that charity should be fostered and not famished. Let me say, Mr. Chairman, that it is absurd, the mere statement will show you that it is absurd, to believe for a moment that men who know the nature of private charities do not know that turning them into public institutions will tend to destroy charity in the hearts of our people.

The fear that lies at the root of this report, let us be frank about it, — we are not legislating in mutual confidence and trust, we are legislating in mutual fear and distrust, — is that some religious institutions may receive State aid. For one I do not yield to that fear. If it were a fact still I should refuse to turn away from the wisdom of the fathers; but it is not a fact. Are we obliged at this time of peril to reverse the policy of Adams and the men who were associated with him; are we prepared to do so; are we ready to strike out of the Constitution the fifth chapter, which the gentleman from Worcester (Mr. Washburn) so aptly brought to our attention; are we prepared to say that the Commonwealth no longer desires to foster wisdom, education and religion; no longer desires to help private institutions which foster the arts and sciences, or which care for the afflicted; is no longer willing to hold up the hands of those who have done so much for this Commonwealth? And yet that is what we are doing if we adopt this amendment, and that is what we are about to ask our fellow-citizens to do. What answer can we give them when we are asked why we turn away from the policies of the fathers and adopt a new policy in this generation? The modern tendency in this great Nation of ours is to follow the pol-

icy which Massachusetts is about to reject. Take an illustration: The Young Men's Christian Association, undoubtedly a Protestant institution, doing excellent work, most efficient work in the field of social service, work that appeals to all the citizens without regard to their creed, is fostered and helped and officially recognized by the Federal government. Who finds fault; who complains? Everyone knows that the United States is not giving aid to that institution for religious purposes; everyone who takes the pains to inquire knows that the aid is given because the efficiency and usefulness and value of that institution have been made known, and because it is needed as an auxiliary of the government; and the aid is given to it without any fear that it will be used to proselytize and pervert, but with the absolute conviction that that institution will live up to its promise and use it for other purposes.

True charitable institutions will not use the charitable offerings for uncharitable purposes. Charity will not pervert or misuse what is given in God's name and for His purposes, and yet knowing this, because of an unreasoning and unreasonable fear, we fetter ourselves so that in the future we may not be able to help these charitable institutions that have helped us in the past. We are afraid that some day someone may use the grants of public money in some way that was not intended.

Before I pass from that I should like to say just one word about the Massachusetts Institute of Technology and the Worcester Polytechnic Institute. The suggestion was made, — it was pressed with great ardor, — that if they were to be helped they should become public institutions. In attempting to cure an alleged evil we create another. In order to deny public aid to these private institutions, and to make them public institutions, we are taking from those well disposed to support these institutions, so long as they remain private, the motive that actuates them to give generously and freely. Do not believe, Mr. Chairman, do not receive the statement without challenge, that transferring the institutes from the private field to the public, that making them public institutions, will be a public benefit. Is this Convention ready to say that from this day forth it will advise its constituents not to aid any institutions, however well conducted, however necessary to the State, — and we have to confess they are necessary to the State; we have used them in all these years from the adoption of the Constitution, — not to help them, not to foster them, unless in turn they give their title deeds to the Commonwealth, and remain no longer the objects of private benevolence or of private charity?

I began by saying that the best reason for adopting this resolution is, if it is a fact, that the question will be definitely and finally and conclusively settled. If anybody can demonstrate that, that is a good reason. May I say that in the Convention of 1853 the same assurances were given, the same promises were made, the same hopes were entertained? There was no doubt in the mind of anybody but that, if the eighteenth amendment was adopted, religious discussion would end; but it did not. You may say that they did not cover the whole question. No. They had seventy-three years of experience behind them. It was barely suggested in the Convention that they should extend the scope of the eighteenth amendment to charitable and religious institutions. What they desired, as Mr. Lothrop and

Professor Joel Parker of Cambridge said, was to protect the school funds. In their anxiety to protect the funds and to secure funds for public education, they passed the amendment; but they discussed the question, whether or not the amendment should not extend to all institutions, and they said no. There was scarcely a voice raised in favor of the proposition. Are we wiser than they? Is there some new light that has come to us which they did not have? The strife, as the chairman of this committee was pleased to remind us, was quite as bitter, quite as general in those days as it has been since; but they were not convinced in that Constitutional Convention that they should abandon the policy of the older days and adopt the policy we are attempting to enforce to-day.

I realized and tried to state in the beginning that I appreciated the difficult position I was taking in attempting to prevent the passage of this amendment; but I submit that it is necessary that we should reëxamine this question in the light of these facts, and say whether or not, solemnly and earnestly, after full consideration, we are ready to take this step.

Is it not a cause for alarm and cause for believing that we are proceeding with undue, if not with indecent haste, that in the midst of this world war, in this unhappy time, when thousands of our sons will be away, we should press to final settlement this question so intimately related to their liberties?

When this war is over the burdens of taxation are liable to be oppressive. The objects of taxation are going to be more numerous than they were before. If we, in the slightest way, induce the youth of this State to think that because of fear, we have allowed ourselves to be stampeded by clamor, that we have shown disrespect for religion, and have put the sign of disapproval upon institutions where religion is taught, they may ask: Why not tax these institutions?

Is it safe for Massachusetts to teach her youth the lesson which is taught in this resolution, that any institution which has what I was about to call the taint of religion upon it is without the walls? The step from banning the institution in which religion is taught to banning religion from private institutions is a short one.

Mr. Chairman, the evidence before us does not support the reason given for introducing this resolution, and as we love Massachusetts we should not submit this question to the people.

Mr. Pelletier of Boston: Like the distinguished dean of the bar of southeastern Massachusetts, who has just spoken, I may say that I represent no body of men and no particular faith; and yet, like him, I am a communicant and member, if you please, of the same faith of which he has spoken, — the Catholic faith. I am not sure that I caught the entire drift of his argument, though I followed it closely, but as it came to my ears and as I think of it, it seems to me that, standing for the same religion, not standing for it here, but rather should I say believing and professing the same religion, my point of view of this situation is somewhat different from his. I will not undertake to answer in debate, or as at a jury trial, the facts and the arguments which he has presented. There was one figure, however, which struck me particularly and lingers in my mind especially, perhaps for a personal reason, and that was his reference to the attitude of the Federal government toward the Young Men's Christian Associa-

tion in this war. He said he would feel that our Commonwealth could follow the Federal government in aiding and assisting financially the Young Men's Christian Association; that that should be our ideal, and that we ought to remain free in this Commonwealth to assist that or a similar organization.

I think he is wrong in his illustration. I think I know the facts when I say that the Federal government is giving no financial aid to the Young Men's Christian Association; and I know what I say when I make the statement that the Federal government is giving to the Knights of Columbus every privilege and every right that she has given to the Young Men's Christian Association. And I say, let that be your ideal. Foster religion, help religion; not by money, but in a far different way should such help and assistance come; and I take that simile from my brother's lips as best illustrative, if I know the committee of which I am a member, of what that committee was striving to reach.

I tried to put upon paper several days ago some thoughts on this subject, but as the hours went by it seemed to me that it would be entirely unnecessary for me to say a word; and yet I feel that in duty to myself, in duty to this Convention, in the hope that perhaps I may shed just a little ray of light on some particular phase of this question, I ought to announce the thoughts that have matured in my mind after a few years of life and after many hard days in this committee.

First of all, I had in mind to say that I wish I had the power to express the thanks of this Committee of the Whole, which is the Convention under an alias, to the honorable President of the Convention for the care and judgment that he exercised in selecting the committee on Bill of Rights, to which was committed this very delicate, if not the most delicate, question that can face us or the people of this Commonwealth. A more able or more representative committee could hardly have been chosen from this Convention; and I speak with pride, as an humble member, and conscious that personally I might offer an exception to that statement. In politics all shades of opinion were represented on that committee. The different occupations and professions, from minister to wage-earner, were all to be found. In religion the Jew, the Catholic, members of different Protestant sects, all had their voice.

It is perfectly apparent that this subject has caused anxiety to the thinking members of this Convention, and that means all the members, and I am proud to be able to follow Mr. Curtis, our able chairman, to assure this Convention that after our many days of hearings and our many more days of executive sessions, without harsh word or personal invective, all the members of the committee finally agree upon the measure which is before you to-day; and that we are here in full confidence that you will have faith in our good purposes, in our deliberate counsel, and support the measure that we present without change or amendment.

Religion is no stranger in this State, nor shall it ever be. Education in our early days was fostered by the church and State together; and the best work in our history, despite a contrary allegation made on this floor to-day, was done under religious impulse, and the strong foundation upon which we shall ever rest was laid with religious spirit, for God's glory and man's eternal salvation, as the fathers believed.

I would not be misunderstood in my support of this measure. I hold no brief for irreligion, nor to show that religion in education is harmful. In the words of our late lamented Governor, Curtis Guild: "The danger lies to-day in irreligion, not in religion." Our famous colleges and academies of other days, — the firm manhood, intellectual strength and moral worth produced by them, — all attest the strength of religion in education. However, the doctrine of separation of church and State has become stronger and stronger from the beginning and to-day represents one of the elements of our form of government cherished by all the people. The denial of financial support to religion, however, never has meant and never can mean the abolition of religion but means only a transfer of the responsibility of maintenance to those whom it most concerns, — to the members and communicants of each particular religion or sect; it means greater care, greater vigilance for the churches and greater sacrifice for the individual. Religion, which from the words of Washington in his farewell address, and throughout our own Constitution, has become of the web and woof of sound citizenship, is ever to be protected but not supported from public funds The vital question to-day is whether the handmaids of religion, education and charity, under private control, should have support from public funds.

In the early days theory and practice, in this respect, were not of one mold, but we now are living in a new era, a cosmopolitan day. Conditions which permitted the use of public moneys for education under religious or quasi-religious influence, which gave public moneys for private institutions under more or less religious control, for years have been undergoing a change, until to-day undeniably there has grown up a large public sentiment against supporting any private educational or charitable institutions; and your committee, I believe, without criticism of the past, but recognizing the growth of State control in many matters once considered absolutely private, facing fairly and frankly the many forms of religious belief, and not unmindful of the growth of unbelief, — and I think I quote their sentiments fairly, — our committee feels that it has recorded public sentiment in its measure, which denies public support of any private affairs except public libraries and the Soldiers' Home.

Your committee found it impossible to define "religious beliefs", "sectarian", and the many words which have been used in an attempt to explain the eighteenth amendment. One religion is easily recognized as of dogma; another is less easily identified; a lecture to one man may be a sermon and religious practice to his neighbor; a prayer-meeting by one is considered simply as his acknowledgment of his Creator; to another it is a form of religion; and so we might go on until we find ourselves in a vicious circle of argument with no beginning and no end.

Our attempt has been made to frame a measure which would need the least possible judicial interpretation, and which would leave at least no open apparent way for continued public discussion.

The appropriation of public moneys for private affairs, educational and otherwise, seems to have been growing. Coldhearted indeed the Legislature that could refuse a few dollars to some charitable institution, to some hospital or the like. And yet, as the years roll by, the demands continue from the same sources, and others hopeful and

equally worthy seek to enter the list of petitioners for State aid. Under the present system, the State may build strong an institution, which grown strong with State aid, yes, grown rich with annual payments, sometime may say: "If we can receive no further aid, we shall preach this or that theory, science, or practice, inimical though the same may be to the Commonwealth and the Nation."

Is it too harsh a thought to picture a university teaching anarchy, a hospital teaching birth-control, an academy teaching atheism, although they have been nurtured and built strong under State aid, their previous good name established, their very land and buildings purchased at State expense?

But I will not urge those reasons because they may seem pretty far-fetched. I prefer to take from the lips of the Honorable Henry Parkman his magnificent statement made to-day, when on this floor he said that, although representing a private charity that might be affected, he knew they would support this measure even though it might cost something, — they would support this measure out of the sense of patriotism.

If there is any worthy institution under private control which will cause the people to suffer by denial of State aid, is not the way always open, if it is really public in purpose and public-spirited in management, if it is rendering a needed service to the public, — is not the way always open, I ask, to such an institution to give its name, reputation and property to the State for public control from public funds? We have such an example, as has been referred to to-day, in the Agricultural College giving over real estate, buildings and good name to the Commonwealth for public control by public funds in the future; and who shall say that that institution has gone backward under State control? Who shall deny the fact that it has made tremendous progress under that control?

In conclusion, gentlemen, I might say that in the framing of this measure there has been mutual respect for all persons, mutual respect for religious belief and theory. There has been some yielding of opinion, and yet it has not called for the sacrifice of any principle; it is not a jury compromise. We give it to you as our best thought for the best interests of the Commonwealth. We ask you to give it to the people even as it has come to you, with a unanimous vote, that the people may be impressed and deem it worthy of final enactment. [Applause.]

Mr. William H. Sullivan of Boston: I have no prepared speech to deliver, but I feel justified in saying something, because I was honored by the President with an appointment on the committee on Bill of Rights. I approached my duty on that committee in the spirit in which all the delegates to the Convention approach their work, with the firm determination to do what I could for Massachusetts. I felt, when the report was unanimous, that no word of mine would be necessary, and I feel so now.

Some question has been raised by one of the members of the committee as to whether I was actively in favor of this report of the committee. Standing here I may declare my position, and incidentally make some comments upon the eloquent speech of the gentleman from Fall River (Mr. Cummings). In our committee I expected to hear all the evidence, judge of the motives which prompted the speakers, and

come to some conclusion which I could report, with the other members of that committee, to this body. Unfortunately, the eloquent gentleman from Fall River did not appear before that committee; we could not get his viewpoint nor his testimony. We had been informed by a member of the committee and by some of the witnesses who appeared before us, that there was great need of this sectarian measure; that there would be a demand for financial support for parochial schools and other sectarian institutions. This the Catholic members of the committee indignantly denied. We contended then, and I contend now, that there was no occasion for a sectarian measure, that there is and will be no request for financial assistance for Catholic institutions. I am entirely in accord with the gentleman from Fall River, who says that there is no occasion for a sectarian measure because the Constitution, by the amendment of 1853, now prohibits sectarian appropriations; yet while he argues that our forefathers years ago made no provision to eliminate support for sectarian institutions other than parochial schools, in another breath he argues that the Supreme Judicial Court decided that that measure did cover such institutions; and in that I am in entire accord with him.

The gentleman from Fall River says: "Let us not light the fires of religious differences and spread them abroad from the east to the west", and I am in entire accord with him there. But apparently he does not know that years ago the fires were lighted. He says that he is close to his people, and that has been proved by the magnificent vote he got which permitted him to come to this Convention. But I say, — perhaps it may be considered egotistic, — that the man who is closest to the people is not the man who confines his efforts to the practice of law and who achieves great distinction in the law, but the man who would serve his people in public life, who would do something for his people at the sacrifice of his profession. That is the man who is closest to his people; and because I have represented my constituents in public life I come here to help solve this question which concerns the whole of Massachusetts, not as the representative from any district but as a man from Massachusetts.

The fires have been lighted and, as the gentleman from Newton (Mr. Anderson) has well said, he will not permit them to go out until the question is settled. They have been lighted; and I have witnessed in my three years in the House many a conscientious man defeated for reëlection, maligned and misrepresented, — a burnt offering, — because he voted as he believed on this sectarian question.

Now, that was the proposition which confronted our committee, — to put out forever those religious fires, which the gentleman from Fall River thinks are just about to be lighted. I agree with him that there is no occasion for this sectarian provision, so called; that this amendment adds no new prohibition; simply confirms the old. Then, if we compromise, what have we given away in this amendment? We have given away nothing. We have simply satisfied some members of this Convention who are honest and sincere, who believe this amendment perfects the amendment of 1853 and who believe that some day, if this amendment is not adopted, raids will be made upon the treasury, without, I contend, any justification for this belief; because when they came before our committee we asked repeatedly: "What is the occasion for this measure at this particular time," and no answer

ever was made. But we are here to listen to other men perhaps equally as sincere as ourselves, to consider their grievances and, if we do not have to concede too much, to compromise with them for the sake of Massachusetts.

I agree with the gentleman from Fall River (Mr. Cummings) as to there being no occasion for the sectarian part of the amendment. We are giving away nothing when we insert one new phrase. But there is great need for that part of the amendment which prohibits appropriations for private institutions. Having served in the Legislature of Massachusetts, and knowing the ease with which the money is extracted from the public treasury, knowing, as the gentleman in the third division (Mr. Lomasney) has well said this morning, how the unctuous representatives from wealthy institutions come before the legislators and get vast appropriations, when I realize that $17,000,000 have been expended on private institutions, then, representing my constituency, limiting my thought on this phase of the question to the environment of the district from which I come, I say that my people, the ones I represent, shall not be compelled to pay their taxes to support those private institutions in Worcester and other places. They should not be expected to do so.

The gentleman from Fall River has said: "Let us not depart from the position of our forefathers", those all-wise men; and yet we read the other day that he departed most radically, having cast the decisive vote in favor of the initiative and referendum. He says: "Let us not depart from the policy of our forefathers", but how much farther could you get away from the old propositions of the forefathers than that? [Laughter.]

Sitting on that committee, we were prepared to hear all the evidence, and no opposition appeared to this measure. Are we not justified in saying that there is no systematic opposition to it? It reconciles everybody. For the sake of saving the treasury of Massachusetts and preventing my constituents from being unjustly taxed, I favor the whole measure without any division. I want no separation of the sectarian part from that of the private institution, and I oppose any such separation.

Now, I am reminded that some time ago the gentleman from Fall River (Mr. Cummings) handed in an amendment, which apparently came from the gentleman from Fall River as the result of a meeting at the Union Club, — a provision which provided that private institutions now receiving donations from the State be protected until 1925; and I am reminded also of the fact that the Fall River Textile School takes $46,000 a year out of the Commonwealth. To that I am opposed. My people shall not be compelled to support that textile school in Fall River.

These are some of the incoherent thoughts which I have sought to express. My purpose in rising here is to make my position plain; to answer very feebly the fatuous theory of the gentleman from Fall River. If I were to approach this question as a politician solicitous about his political future, I should sit still and take no position at all. Were I approaching it as a politician anxious about his future, I should search in my vocabulary for the most bitter words with which to characterize the motives or the methods of the proponents of the sectarian measure. Were I to approach this question as a Catholic citizen, I

should read from the fair pages of history of the deeds and the sacrifices of my fellow-Catholics. Were I to approach this question as a member of the Catholic church, I would enter into an impassioned defence of this church, which has stood for centuries, undimmed by time and unchanged by persecution, the mother of patriots and the mentor of heroes, to-day stupendous, majestic, splendid and immutable.

But, sir, I do not approach this question as a politician or as a Catholic, but as an American, a son of Massachusetts, born here, taught his ideas of American citizenship by a Massachusetts mother, whose love for Massachusetts was intensified by the example of an alien father, an Irish Catholic, who came to Massachusetts at the age of twelve, enlisted in a Massachusetts regiment at the age of seventeen, and served with distinguished valor from the beginning to the end of the Civil War. As such an American I approach this question, and I urge the adoption of this amendment which is suggested by the committee because it will prevent dissension, disruption, disunion; because it will bring our people of Massachusetts into closer communion so that, with inspiring loyalty to Massachusetts, with irresistible unity, we all can sweep onward to the consummation of the glorious destiny of Massachusetts. [Applause.]

Mr. Brown of Brockton: If there was one subject upon which I had pledged myself that I would not say a single word, and upon which I knew very little and cared less, it would be this sectarian amendment. When I heard the words of the gentleman from Fall River (Mr. Cummings), who is of an opposite faith from myself, as are each of the three gentlemen who have spoken, I want, in just a few words, without any notes whatever, and without any preparation, as some have had, to say why I am going to be recorded with him against this amendment. It is because of what he said; which proves conclusively that in this Convention men can come and change their minds. If I say anything, it is to say that I was going to follow the gentleman for whom I had the honor to vote for president of this Convention (Mr. Lomasney), because, knowing him to be of an opposite faith, knowing him to be absolutely fair, I was prepared to take what he offered with my eyes shut.

But when it comes to the time that the gentleman points out, as he has pointed out to you, that the mere fact that you are unanimous here does not stop this talk throughout the Commonwealth, he struck the keynote. That is a thing to which you are to address yourselves. You never heard that, as I understand it, until the gentleman from Fall River sounded it. He says that that will not stop this discussion; and along with this discussion I heard the gentleman in the second division (Mr. Curtis) point to the gentleman who is the author of the amendment (Mr. Anderson of Newton), or in charge of the amendment, as one who could make black white, and who even gives the suspicion right here and now, after the gentleman in that division has given it, that the gentleman himself is all right but he does not answer for others, or that, knowing anything about the question, he supposes that this is going to quiet it.

Put it in the ballot if you want to, and you will give those people the very chance they want to go about and organize themselves as a force. Already they are putting themselves up in this Commonwealth

as wanting to project a candidate, and you will give them an issue alongside a candidate. That is what you are going to do. Why do you interfere with it at all? Have we not got along very well with it as it is?

Gentlemen before me have spoken of their own personality; pardon me if I speak of mine. The old saying is: Examine what is said, not who says it. And have I had any experience? I came into school life at the very time that this question was up in the old Eliot School at the North End. I was born in the North End. I there joined in protest with some others, at the time the boy was flouted across the bench by the master because he objected to things which were then done in the public schools, and the doing of which led to the parochial schools, or at least helped them along. I admit that I stood in sympathy with that boy, although I was of the opposite faith. I made a scuffing of the feet, and I have not forgotten what I got for it. That question, as I say, can be left alone.

Liberal as the forefathers of this Commonwealth were, it stood until 1833 that no one could be recognized in this Commonwealth except he was Protestant. It was in 1833 that they took out that word. And pardon me for a minute as these thoughts come. The gentleman whose business it is to conduct people to heaven, according to the definition of a gentleman who lives at the foot of the hill, took religion and gave it a personally conducted tour backward, and I want to do the same thing for a minute.

You will find that all governments originally come in under the military, and they are not lasting simply because they have got nothing to keep them, — nothing but conquest, nothing but selfishness. A little later the fellow who is going to die as the result of the military goes to the fellow who is at the inner veil and has him tell him, in case he dies, how he is going to heaven. Then you find the church is joined to the military.

Far be it from me to say one word against any church. I say here and now that as the result of my lifetime I see good in all and none that has all the good. I have reached that large position. But, to continue, the church takes charge with the military. From the time of Constantine down to the time of Charlemagne, who gave you civilization if it was not the church, no matter what name you put to it? The trouble to-day is that the church is criticized by people who are perfectly free because of the sacrifices of martyrdom to air their ideas, but if they want to air them properly why do they not go down to the conditions which surrounded the men who did what they did do at that time? Why do they hold this, that and the other religion, or this, that and the other time, responsible, — think of it, — without entering into the conditions that prevailed at that time? If you denounce our forefathers, remember that they had not forgotten King James and all that he took to himself at that particular time. Thus do we see that oftentimes if men belong to any religious faith it is due to them to live up to the highest possible standard in order that they may elevate the particular religion to which they may belong. But our forefathers had not got over the old feeling, and it is because, therefore, of King James and his times and certain other things that they felt as they did.

Well, 1833 took out the "Protestant." In 1850, — we must think of the times as they were, — it was about that time that so strong was the feeling that when the militia of this Commonwealth marched over to the Common and the Montgomery Guards came there other companies shouldered arms and went off, leaving the Montgomery Guards there. It is well that we look to the changed conditions. That would not be done to-day. The conditions changed and men softened from day to day, and they are softening now. So, too, in regard to the schools since that time; feeling gradually has softened.

Why do we interfere with it at this time? My fear is that it is going into the ranks of labor, now united. My fear is that, where labor now knows neither race nor creed, pretty soon we will commence to talk about this Constitutional Convention provision. You are going to hear two sides of it. You are going to hear these narrow people get out and try to express their idea that there is a religion in this Commonwealth that ought to be trampled upon. Do not disguise it. Do not shut your eyes to it. Gentlemen like to say that everything is lovely. Gentlemen like to say: "Oh, we have got it all settled. Is it not nice? The Convention is all agreed. We are going to sleep. Hurrah! Praise God from whom all blessings flow." "Let us settle the trouble on the other side of the water. All we have got to do is to agree to it, and it is settled." Is it settled? I guess not.

I will agree with the gentleman who last spoke, or the next to last who spoke, that there is irreligion. While I myself am free, and call myself perfectly free, yet at the same time I want anybody to show me that if I have not got veneration for the Divine Power I ought to have more of it. And yet I say freely here that the time has come in Massachusetts when men almost have to apologize for referring to the Divine Power. The man who refers to that Power, and who thinks he can trace that Power as the cause of the events behind the events themselves, and undertakes to draw analogies and to show that like causes produce like results, is told immediately that he is in the clouds. And so it is, — it has come pretty near to it to-day, — that if a man has any particular opinions along that line and is thinking along that line he is in the clouds.

But you cannot get away from the question that has been raised here by the gentleman from Fall River (Mr. Cummings), to whom you listened so attentively, and the whole point of it is that he votes against this matter because he feels that it simply will cause discussion to take place in this Commonwealth which will not take place if you do not vote any resolution at all. Gentlemen say: "Let this go out from here." Why, it goes out then under the august accompaniment of the minds of this Convention, but that does not save the discussion. If it is to come at all, let it come under the guidance of those men who particularly have fostered it during all these years. Let them go to it. If ever they put that issue up in this Commonwealth where there is a chance to vote on it there is no question where the majority would be. There is no question about the liberality of Massachusetts, and I see no reason why we should simply get here on bended knees and tread as if treading on eggs, and go around with the idea that if we are politicians all we have to do is to vote for it and we have done our part and are through with it because the whole of them have voted for

it. Now, if it does come out as the majority of the committee say, if it does come to pass that everybody votes for it and nothing else and that we do dispose of it in that way, then can nothing but glory come to you people for having got it out of the way. But if, on the other hand, the gentleman from Fall River is correct, it is a different question.

Have you anything here which you think is bigger than that? Have you any issue that you want to send before the people that is bigger than that? Well, take warning. You will have some other question to meet besides that thing that is near to your heart. Do you want the initiative and referendum? Before you get a chance to vote on that you may have a chance to talk on something else. Do you want anything on labor? Before you get a chance to talk on labor you will find they want to hear something on the sectarian question. Somebody will have started it. It is going. But if you let it alone the issue dies.

You have not settled it. At the very best what do you do? Why, simply you do not trust the Legislature, which is composed of such great big heads and such generous hearts that the worst that has been said of them in this debate is that they fall on a man's neck and give him what he wants. If you tell me, with the Legislature under the influences which the gentleman from Boston (Mr. Lomasney) says that it is, that this settles the whole question and that there will be no way whereby the legal fraternity can invent something by which to undo what you are trying to do, I doubt it.

Mr. Chairman and Gentlemen of the Convention, I have taken all the time I am entitled to. As I told you, I did not want to say anything. Strange to say, I have got something on another matter two numbers down, but I will save it. I will not hit you so hard when I come to that. But I want to be serious. I want to be as serious as the gentleman from Fall River (Mr. Cummings). From all my experience, from all that I know, I do believe that this matter will be discussed, that it will not be discussed in the temper of this Convention, that there will be men who will take the opportunity to express themselves on it, that thereby you will awaken discussion. No good will come of it. It is far better to let it alone. [Applause.]

The amendment moved by Mr. Washburn was rejected.

Mr. McANARNEY of Quincy: I rise not for the purpose of making an address to the committee on the proposed amendment. I rise merely for information. You will recall that several days ago the present chairman, when addressing the Convention, referred to something we all know to be a fact, that when the Supreme Judicial Court is called on to construe any part of the Constitution, it turns frequently to the debates of the Convention having to do with the framing of that portion of the Constitution for the purpose of ascertaining the meaning thereof. Therefore it is well, when we are dealing with any proposition looking toward an amendment to the Constitution, to see to it that the definition the Convention wants to attach to the amendment which it intends offering to the people may be made a matter of record, so there may be no confusion in the future as to its meaning Now I would like, sir, to have the committee on Bill of Rights, speaking

through any member, state to this Committee of the Whole what meaning it is intended to attach to the words "denominational doctrine", as used in the proposed amendment.

There are many men who view this question as I do. They want to see it settled now and if possible for all time, in so far as it can be so settled. They want to settle it in the least offensive manner. Personally I know that at first blush whoever undertakes to define the word "denominational" will turn his thoughts to matters that are purely religious. He will draw before his mind the definition of some religious society, Catholic, Baptist, Methodist or whichever may come to his mind, and its teachings. When you refer to "doctrine" and you associate that word with "denominational" you are apt to limit it entirely to a religious teaching. Was that the intention of the committee? Did they mean to include that and something more? For instance, assuming in this Commonwealth there came a time when one of its communities should come under the control of those who, not believing in religion, believed, if you will, in atheism, and undertook to teach atheism in the public schools thereof. Would teaching atheism in such schools be inculcating a "denominational doctrine" within the meaning of those words as used in the proposed amendment and thereby prohibit such schools obtaining money from the public funds, or would the schools, notwithstanding such teaching, be entitled to public funds?

If the words "denominational doctrine" are intended to prohibit the giving of public money to schools while atheism is being inculcated therein, then I think the Convention will declare itself in favor of a proposition that I personally can support.

Mr. Edwin U. Curtis of Boston: I did not catch the very last part of the question, — the very last part.

Mr. McAnarney: Mr. Chairman, my inquiry, stating it more briefly, is this: Did the committee by the words "denominational doctrine" mean to prohibit all denominational teaching relating to the hereafter, including the denying that there is an existence after death?

Mr. Edwin U. Curtis: I presume there are several gentlemen on the committee who can answer that question much better than I. Our discussion yesterday took a religious turn that, I frankly acknowledge it, was a little beyond me. I believe, however, in answer to the gentleman, that this can be said: We did not want to leave it that our schools ever should become atheistic or agnostic.

Mr. Anderson of Newton: These words "denominational doctrine", were the words at which the committee arrived as the result of hours of discussion. We tried a great many different phrases at this point, for we wanted to find some one phrase which would be agreeable to all. As is usually the case in such instances, it is not the best phrase in the minds of a good many of the committee, but one which does adequately express the ideas of all. By "doctrine" of course we mean teaching, denominational teaching, and by that, as I understood the debate, — and I think that I speak for all the members of the committee in this particular, — we mean any distinctive teaching of any denomination. Every denomination has some distinguishing doctrine on which it stands, because of which it separated

perhaps from some religious body to which it formerly belonged, which it still maintains, and which is a reason for its continued existence. What we mean to say is that none of those denominational teachings shall be inculcated in any public or private school to which public funds are given. Now I do not care to go into that in detail except in answer to the gentleman's inquiry, and I may say that the gentleman's inquiry has been a subject of a good deal of consideration and anxiety with me. It has seemed to me that our phrase ought to cover the very case that he has raised, if the Justices of the Supreme Judicial Court take a large view of the matter, for when a society is not an irreligious society or a non-religious society, but an anti-religious society, it seems to me to be teaching some doctrine peculiar to itself in the sphere of religion. For that very reason I think, although we do not want to increase the verbiage here, that a large view of this matter on the part of a future Supreme Judicial Court would cut out anything of that kind.

Mr. McANARNEY: The answer of both the gentlemen satisfies me I have got into the record the committee's interpretation of those words, so that in future there can be no doubt what this Convention means by its use of them.

Mr. CLAPP of Lexington: I am very much in favor of the general principle of the Curtis-Lomasney amendment, and I am one of those who believe that when the proposition is put before the voters at the approaching election it will receive the support of a vast majority. At the last session of the Convention I did not like the language of the concluding part of the amendment. It seemed to me vague, obscure, and difficult of interpretation. And so I offered, as possibly affording some assistance to the committee, the amendment found printed at the bottom of page 2 of the docket. I could not understand what was meant by the concluding language referred to, and I made an attempt in five or six lines to state what I supposed the committee were aiming at. I believe that I succeeded in so doing, as is evidenced by the change of form of the end of the resolution which Mr. Curtis has brought in to-day. And I may say that while I believe the shorter form expresses it all and states in forty-one words what the present draft states in seventy-one, yet the improvement is such as to satisfy me; and therefore I ask the privilege of withdrawing the amendment which I offered the other day, and I hope that the resolution as offered by the gentleman from Boston, the chairman of the committee, will be adopted without any further change.

The CHAIRMAN: The Chair will inform the member that the amendment not having been moved a formal withdrawal of it is not necessary.

Mr. Horace I. Bartlett of Newburyport moved that the resolution proposed by Mr. Curtis be amended by adding at the end thereof the following words: —

But nothing herein contained shall prevent any city or town from expending money raised by taxation or otherwise in the education of its school children in any school approved by the school-committee and not under ecclesiastical or sectarian control.

Mr. BARTLETT: This amendment is very like the amendments proposed on page 2 of the docket by Mr. Boyden of Deerfield and Mr. Hall of North Adams. I understand that Mr. Boyden proposes to move in the morning for another amendment, and I only make this

motion this afternoon to get the matter before the Convention. I do not want to discuss it at any length, because those other amendments are very like it, and we might come to something which might include this. Therefore, unless it is desired that I discuss this this afternoon, I move that the committee rise.

The motion was defeated.

Mr. BARTLETT: I want to say something about this proposed amendment. It is an exception which ought to be put into this measure. There are in various parts of the Commonwealth schools which are not in any way sectarian and in which no sectarian doctrines are taught and it is an advantage if the municipalities can send pupils there. The sending of them is in no way for the help or support of the schools, but entirely for the benefit of the towns which have that opportunity. There is in the town of Newbury a school called Dummer Academy, which many here know about. It was established before the Revolution by William Dummer, then Acting Governor of the Colony, and it is in no way sectarian. The inhabitants of that part of Newbury could send their scholars of high school grade to that school very well and it would be greatly to their advantage, and they have sought a way and means to do that, to expend their money for that purpose, — instead of sending their scholars off to some other town by train or otherwise, — to educate them in a good school in their own town. They ought to be permitted to do it.

There was for many years a school in Newburyport called the Putnam Free School. It was in no way sectarian. A fund was given many years ago for the support of that school in Newburyport and for forty years or more, notwithstanding the constitutional amendment adopted in 1855, that school was run jointly by the Trustees of the Fund and the school-committee, and greatly to the advantage of the city, and there was no hint nor suspicion of sectarianism about it, nor anything in the will of Putnam or anywhere else that made that school in any way sectarian. The town of Newbury wanted to send its pupils there but it could not do it lawfully under the provisions of the constitutional amendment of 1855.

There is in Ipswich a large tract of land given 200 years ago for the use of the grammar school. There is a fund given by the will of one Manning for the establishment of a school of high school grade and character in Ipswich, and for years the Manning High School of Ipswich was carried on by a joint board consisting of the feoffees of the grammar school, the Manning trustees and the school-committee. And there is no objection, it seems to me, and there ought not to be any objection on the part of any of this committee, to excepting situations like that from the provisions of their proposed amendment. My amendment provides that any city or town may expend money "in the education of its school children in any school approved by the school-committee and not under ecclesiastical or sectarian control." And there is no reason that I can see why that should not go into this measure. A similar situation presents itself in other parts of the Commonwealth, as is seen in the amendments printed here offered by Mr. Boyden of Deerfield and Mr. Hall of North Adams. I did not go before that committee yesterday on these amendments, because they

announced, when they made their first report, that they had given attention to every argument and to every communication and they had a communication from me setting forth this matter fully. Yet I hear that I was five times called upon before that committee yesterday. I thought it was no use to go if they had fully heard these matters. The reason why there should be an exception in such cases is stronger than the reasons why there should be exceptions in these cases which we have here in this measure. It is not a helping of the school in any of those instances; it is a helping of the town, whereby they can spend their money for the education of their school children to much better advantage than they can in any other way. I hope that some of the gentlemen who favor similar provisions will be heard from on this matter.

Mr. ANDERSON of Brookline: It is with hesitation that I rise to say anything on this matter. Among other reasons for the hesitation is this: I was unable, because of conflicting official duties, to be present during the morning session and to hear the arguments and facts adduced by other delegates. I have, perhaps, in a certain way, a personal interest in this proposed amendment. I am one of the trustees of Cushing Academy, located in Ashburnham, an institution from which I graduated many years ago. It is an institution founded originally by a gift of a native of Ashburnham. Whether he had any religious views I do not know. So far as I understand the charter and by-laws under which we exist it is absolutely non-sectarian, undenominational, — you might say *non*-religious. For many years in that town, the town being heavily loaded with taxation, pupils of high school age have attended the academy, tuition being paid by the town in a lump sum, — which figures somewhere about a quarter or one-third of what it would cost the town otherwise to furnish equivalent facilities in sending these pupils to Winchendon, Gardner and Fitchburg, the three places to which they naturally would go, — probably less than a quarter of what it would cost this town and its taxpayers to furnish high school facilities, within the town, anything approximating in adequacy the facilities furnished by the academy. There are, I am told, several other similar or analogous instances within the Commonwealth. It is possible that the principle involved is so important that the Commonwealth ought to cripple itself as to joining public moneys with private moneys in such educational undertakings, but I have yet to hear statements of fact or arguments which show me that that is clearly so.

There is another class of institutions within the State, supported in part by private moneys and managed by privately selected boards of trustees, that is, public charities, not governed by State boards of trustees, which I, knowing comparatively little about them, have yet thought were of increasing importance. They are the textile schools and certain other kinds of technical schools which are being promoted within the Commonwealth to give us technical education.

I direct the attention of the members of this committee to the fact that we in Massachusetts are not richly endowed with natural resources, that in the competitive contest to maintain our industries fairly on a level with those of other States we need to proceed, unhampered by any unnecessary restrictions in our Constitution, to give the most thorough education and training to our human resources. From

the committee on Public Affairs, of which I have the honor to be chairman, we are reporting for your consideration various measures tending to unhamper the Legislature, so that it may proceed more freely to serve by necessary legislation the great, growing, increasing, — and increasingly perceived, — public needs of the Commonwealth. I cannot easily accept the proposition that in the important work of education we are so torn by distrust of each other, by a subterranean but yet existent jealousy of each other's religious convictions, that we cannot trust the Legislature to deal in the important work of combining public funds and private funds in the tremendously important work of education. But that is exactly, as I understand it, the proposition that this Convention is asked to submit to the people. One field is put absolutely out of the opportunity of coöperation and coördination between private funds and public funds. If I am wrong in that conclusion, I should like to be set right. If that is the conclusion, we ought to approach that proposition with more soberness and more discussion, and more recognition of the burden upon its proponents, than I have heard yet.

I was much impressed with the part of the eloquent speech from the gentleman from Fall River (Mr. Cummings) to which I was privileged to listen since I was able to come to the committee this afternoon, — not that I agreed with all that he said, but there was much there to give us pause. I was much impressed by what was said by the gentleman from Saugus (Mr. Bennett) the other day to the same effect, that we ought to go slowly and carefully before we say to the Commonwealth: "You shall not put your public money and your private money into any educational institution, however non-sectarian; however little it may have anything to do with any man's religious belief or religious prejudice, you shall not put one dollar of public money along with private." I am not ready on any showing yet made to vote that. I hope that the amendment of the gentleman from Newburyport (Mr. Bartlett), perhaps changed somewhat as to form, will prevail. I believe that it ought to remain possible to appropriate public moneys from the treasury of the Commonwealth of Massachusetts to go with private moneys into any sort of an educational undertaking which is absolutely free and divorced from any sort of ecclesiastical or sectarian control, and which also does not in any particular inculcate any kind of religious doctrine. It seems to me that that is the sound principle, and not the absolute prohibition which, as I understand it, is proposed by the report of the gentleman from Boston.

I have had to say what I had to say on this this afternoon, for I beg the indulgence of the committee to say I am absolutely compelled to go into court in a Federal case to-morrow morning, — a case growing out of special war needs, requiring a jury trial right now in midsummer. This I had no reason to anticipate when I gave myself the privilege and the honor of becoming a member of this Convention. Hence I must state my views this afternoon, regretting that I have not had the benefit of all that has been said here in debate.

Mr. Edwin U. Curtis of Boston: If I do not answer the argument of the distinguished gentleman from Brookline it is because the hour is late and I feel that I could not in the short time adequately answer it. I will, however, say that I hold in my hand a letter from Mr. Charbonneau, who is a member of this Convention, saying:

"I desire to withdraw my proposed amendment to the sectarian amendment reported by you", this amendment being one for the textile schools. I trust that we shall come to a vote to-night and that the report of the committee will be accepted.

Mr. GEORGE of Haverhill: I do not know as I quite understand the *modus operandi* of running Constitutional Conventions. I understand from certain members of the committee on Bill of Rights that we all must come up and vote for this resolution because other members of the committee on Bill of Rights got together last night or this morning and agreed. If that is the case all we have got to do in this Convention is to accept the reports of the committees. We can do that all in ten days and go home. But I understand by looking at the record some of these gentlemen vote one way and talk another. The other day when I had a committee report here from the committee on Elections I found three of them recorded against me, and to-day those three are the strongest advocates of standing by the committee of which they are members. I do not know as that indicates anything, but it indicates this to my mind: I thought they did right the other day when they voted against my committee, and I think I am doing right to-day if I vote against this committee if I think their position is wrong; and I think if a majority of this Convention is not satisfied that the report of this committee is right it is up to a majority of this committee to make that report conform to the judgment of the Convention. We understand that there are two questions. They say there is a public sentiment against appropriating money for sectarian institutions. They say also with great deference that there is a tremendous public sentiment against appropriating money for non-sectarian institutions. Now I should like to have the committee on Bill of Rights tell us how many people came to that committee and asked them to pass a law that would disfranchise eighty per cent of the public charities of Massachusetts. I understand we have something like 900 charities, mostly public, representing assets to the amount of $125,000,000, which are spending $16,000,000 annually, and in order to take religion out of politics and in order to stop appropriations for sectarian institutions we are going to disfranchise about 500 non-sectarian institutions to conform with the opinion of the gentleman from Boston (Mr. Lomasney).

Mr. LOMASNEY: In response to the gentleman I would say that the report of the State Board of Charity for 1915 shows there are somewhere around 850 charitable organizations in the State making reports to the State Board of Charity. There are only six or seven that received any money from the State. The other eight hundred and forty-odd collected their money and spent it, the money was subscribed by private persons and no State aid was given them.

Mr. GEORGE: I do not know what that has got to do with this case. I was speaking about 900 charities. Now if this is not going to affect many of the charities in the Commonwealth what is the use of making so much noise about it? One difficulty with this committee is this, if you will pardon me for speaking. The committee on Bill of Rights is supposed to consider those questions that affect the Bill of Rights. There were resolutions introduced affecting the Bill of Rights, but the committee on Bill of Rights have reported a measure that touches a very little of the Bill of Rights, but they go

into the school question, they go into the hospital question, they go into the Soldiers' Home question, and they have traveled all over the Commonwealth and entered into every other department and done very little about the Bill of Rights, and they do not propose to amend the Bill of Rights; they propose to amend a subject that is entirely outside of the Bill of Rights. That is where the difficulty comes.

Now that school proposition ought to have gone to the committee on Education. The question of private charities and public charities ought to have gone either to State Finance or to the committee on State Administration, and the question whether the Commonwealth of Massachusetts should authorize money to be paid to sectarian institutions should have gone to the committee on Bill of Rights.

I am not prepared to discuss the whole situation to-day. I do not have any objection to the committee reporting this measure into to-morrow's Convention, but I am going to offer a substitute measure after it gets into the Convention and also I am going to offer another measure in another part of the calendar which I think will divide that proposition; then I think that we can approach this question and know precisely what we are doing. I do not think we all know what we are doing to-day. [Cries of "Question."]

Mr. Bennett of Saugus: I trust the gentlemen who have made up their minds and are convinced in regard to the public value of this proposition will allow those who have a different opinion to express their minds upon it. I move to amend by striking out all after the word "expended", in line 17, — all that part of the amendment which is printed in capitals.

Now, Mr. Chairman, I have the same diffidence in regard to this that I have had upon all the previous matters in which a plain farmer is expressing his opinion against not only that of great lawyers and college professors but especially against that of acute politicians, and especially of the acute politicians of the city of Boston who have a wireless telegraph at work from the North End to the South End every day in the year, and who know how to arrange matters so that what the public want will carry with it to the polls something that the public do not want but which they vote for in order to get what they do want. Mr. Chairman, it seems to me, — as I say, I have some diffidence in regard to this opinion, — but it seems to me that this amendment of mine meets all of the objections to this amendment except those of the sectarian or non-sectarian character; it meets all the other objections. It does what we have been urged to do in so many other matters, — leaves the situation so concise that it gives the Legislature and public some flexibility.

Now as you plow through this docket you will find in many cases that it is proposed to take a course exactly the opposite of this. As, for instance, I was talking with a gentleman to-day who has been watching for some years past that little word "proportional" relating to taxes, upon which there has been built up a library of opinions and decisions almost large enough, I was going to say, to fill this hall; and they want to take out that "proportional" in order to let the Legislature or the referendum or what not, have more flexibility in regard to appropriations for the public good. Now here you are proposing to go to work and make the Constitution less flexible. If we adopt this amendment we meet, it seems to me, all the objections of all the

gentlemen who have spoken against this proposal. Now, Mr. Chairman, in a somewhat reasonably long life, now perhaps approaching the twilight, the greatest revolution that I have seen in this world has been the revolution in favor of religion. When I was a young man there was a wave of materialism over this country, due partly to our great material achievements and partly to the studies and discoveries and revelations of Darwin and others; and the greatest revolution that I have seen, — and I say this because of something that has been said about a rising tide of atheism, — the greatest revolution I have seen has been in respect to prayer. I do not find a man anywhere to-day who does not believe in prayer. Thirty-five or forty years ago it was different. I do not find a man anywhere to-day who does not believe in prayer, and I find very few men who do not believe that the cornerstone of their activity in this world should be the parable of the lost sheep. The ninety and nine were safely housed, but the shepherd went out into the night and the storm to rescue and save the hundredth. I am not talking religion, I am not talking fustian; I am talking with the aloofness, — with the personal aloofness with which I would speak of an increase of the cotton crop or a change in the methods of agriculture, and simply stating what I see to be a fact. And I am going to say further to this Convention that the fundamental political issue of this country and of the world to-day, — political issue, — is the universality of Divine Providence; the universality of belief in the Eternal Goodness and the supreme value of the individual human soul. I am going to say that that is the supreme political issue to-day. It may not be recognized as such, but it is the greatest of the demands here for the initiative and referendum. There is no doubt about it. It is the basis of the growing sweep of trade-unionism which has brought about the restoration of Russia, the centralization of England, and which is doing so much in this country at the present time. It is that supreme value of the individual human soul, — and I speak again with the same personal aloofness with which I would repeat my views and what I see in other directions, — it is that which is causing this war. What else? What else would arouse the people to think and talk in billions, — billions of dollars, billions of men, billions of beneficence?

Now, Mr. Chairman, I do not hear the necessity of this question. Why, since Louis XIV said "I am the State," "the State, it is I," — since the Three Tailors of Tooley Street resolved "that we, the people of England," — I do not think that there has been another event of the kind so interesting as the spectacle of the chairman of this committee and the representative of the Hendricks Club gazing at each other across the expanse of this hall and pleading that there should be no hair pulling, no bloody noses and that no children should step on each other's toes here. Mr. Chairman, this amendment, the first of it, — cut out the clap-trap in the remaining two-thirds, — this amendment, the first of it, is based upon that tremendous growth of religious sentiment in this Commonwealth to which I have referred, and I do not limit it to either the affirmative or to the negative. There is as much of it in the negative of this proposition as there is in the affirmative.

I love the Roman Catholic Church. Before my immigrant ancestor came to Salem in 1635, before the Pilgrims landed in 1620, before Jamestown was settled in 1607, the Roman Catholic missionaries had

been all over this continent, and you can trace from Louisburg at the tip end of Cape Breton Island through Montreal and Quebec and Detroit and the straits of Mackinac and St. Louis and the whole State of Indiana down to New Orleans, — you can trace to-day the enterprise, the vivacity and the courage of those people which originates from that early stock. I respect and admire and love the Roman Catholic Church because during the Middle Ages it kept alive the fires of learning and civilization in Europe. Had it not been for those Catholic monks we should not be here to-day with any Protestant church and discussing any sectarian or non-sectarian amendment. How, then, can we help loving that great communion? Personally I do not see any difference, — I am a member of the Congregational Church, — I do not see any difference between the Congregational Church and the Catholic Church in fundamentals and I probably would be a Catholic had it not been for the influence of heredity, the same as I am a Republican for the same reason. [Laughter.] That is so, — born so. Some are born Democrats, and some are born Republicans, and for the most part it is the convincing reason.

Now, Mr. Chairman, I have gone into this because I want to make plain my attitude in regard to this matter. I have no sectarian or anti-sectarian bias, but as a member of this Convention I should dislike exceedingly to see this piece of clap-trap, which it is, — down in the bottom of his heart nobody in this Convention is primarily in favor of the last two-thirds of this resolution. It is a compromise measure pure and simple. I say nobody is in favor of it. There may be one man, my friend from Ward 5 (Mr. Lomasney), but hardly anybody else is in favor of this primarily, and we know very well that if it had come up by itself it would not get a tenth part of the votes of this Convention. I mean the last two-thirds. If the last two-thirds of this proposition came up by itself in this Convention it would not receive one-tenth of these votes, and you know it, every one of you. Is it not so? Of course it is so. [Voices: "No."] Of course it is so. [Voices: "No."] It is so. There may be a dozen or fifteen. [Laughter.] Now, Mr. Chairman, I hope this amendment will be adopted, and that we shall have the courage to stand up and vote either one way or the other upon that first proposition.

The gentleman in this division (Mr. W. H. Sullivan) who proudly announced that he is a Catholic and has referred to the fact several times, said that they did not want this, — they did not want any sectarian schools. Now if they do not want any sectarian schools, then what do they want in this proposition? What is wanted here in this proposition? Why, what is wanted is the skilful proposition of the chairman of this committee (Mr. Edwin U. Curtis) and the gentleman of the Hendricks Club (Mr. Lomasney) to carry this through, and we are going to tie up the Constitution of Massachusetts, — we are going to tie it up in a way which all of the papers a short time ago were saying was improper; it was improper to get these matters into the Constitution; they could be handled by the Legislature, and all the newspapers were in favor of leaving them to be handled by the Legislature; but this thing has got in such a shrewd shape that it seems to be hitched to a proposition which may carry it through. I hope, Mr. Chairman, that the amendment will prevail.

Mr. George: I asked a question a short time ago for information.

I am going to repeat it and I see that the clerk of the committee is here, and I should like to know just how far the demand is for this particular measure called the Lomasney Amendment, and I should like to have him give this Convention the number of people that appeared before that committee to advocate it, if he will. I understand that there is tremendous demand for this measure all over the State and it must have been manifested in some way before that committee or else they would not know it was tremendous. Now I should like to know how many appeared there before his committee to advocate this State-wide Lomasney resolution.

Mr. BARNES of Weymouth: The hearings on this matter began something over a month ago, as I recall it. There have been various gentlemen before our committee upon this question. If the matter is of interest to the gentleman who has asked this question, sometime before it comes up in the Convention I shall be glad to show him my records, but I do not think it necessary or desirable to delay this committee from voting upon this question by examining those records at the present time and furnishing to him the names of all those who appeared before our committee. If I could do it without an exhaustive search of the record I should do it and do it gladly, but he must know that it would seriously delay the taking of the vote upon this question. If he desires it for his personal information I will give it to him at a later session. [Cries of "Question."]

Mr. GEORGE: These voices here are somewhat familiar, Mr. Chairman; I have heard them before. Now I asked the gentleman not to give us the names of all the people who appeared before his committee on that question; I asked the secretary to give us the names or the number of people that appeared before his committee to advocate this particular resolution, because we have been told that there is a tremendous sentiment all over the State that recently has arisen against making appropriations, for instance to the Polytechnic Institute at Worcester. I never heard of any opposition before, but I have heard to-day that there is tremendous opposition to it. And then there is a tremendous opposition to making appropriations in behalf of the Institute of Technology. I never heard anything about that before. I understand it is a tremendous opposition. I had an idea if this opposition had manifested itself so strongly that the clerk of the committee ought to give us an idea of who appeared for this particular resolution. I do not think he would have to search his records a great deal; I do not think he would have to think about it a great while to give us the information. I have a notion, gentlemen, that there was not anybody there in favor of this measure except the people who live in the vicinity of old Ward 8, and that the people of this Commonwealth never knew that there was any such feeling in regard to this question until the gentleman from former Ward 8 (Mr, Lomasney) discovered it. Now I apprehend that everybody will admit there has been more or less discussion and more or less agitation and a more or less honest expression of sentiment against the principle of appropriating money for sectarian institutions. As I said before, I am not prepared to discuss that now, but it seems to me that we want to bear in mind all the time that there is a marked difference between a public sentiment against a certain thing and a sentiment of two or three individuals which they call a public sentiment. It makes a great difference. Remember, — while

I do not have any objections to taking a vote, I hope the gentleman will be prepared to-morrow to bring in those records and show us what evidence there is of this tremendous public sentiment in favor of this resolution. [Cries of "Question."]

Mr. LOMASNEY: The gentleman has seen fit in the course of his speaking to be somewhat personal toward myself. I learned long ago an old maxim: "There are none so blind as those who will not see", and the gentleman's public record on the Gas and Electric Light Commission indicated clearly that he had very poor eyesight and a limited view of public sentiment. [Applause, interrupted by the Chair.] Now, Mr. Chairman, I want to leave personalities out of this question [laughter, interrupted by the Chair], — and I want the Chair to do his part to keep them out if it is right, and not to do it if it is wrong. I heard here the other day the gentleman from Saugus (Mr. Bennett), stand in this Convention and say that a certain class of people were dirty and immoral. My blood boiled in my veins, but I said nothing at the time. I talked with the gentleman afterwards and he felt that he did not say that. We should discuss these questions calmly and coolly. I am not afraid to discuss any of these personal matters with the gentleman from Haverhill (Mr. George) and with the gentleman from Saugus, formerly from Everett (Mr. Bennett), but it seems to me that they do not interest this Convention. This is a great public question and if he had read the history of the State he should know it. I do not mean the history of Haverhill, because recently that city has been suffering from extreme heat on a religious question. [Laughter.] Mr. Chairman, I cannot sit silent and see men like these two stand up and attempt to fool delegates to the Convention as they have tried to do. I ask mercy from no man in this Convention and I ask no freedom from criticism, but when the Convention allows them to indulge in personalities they must take what I say in return. [Applause.]

Mr. BENNETT: I am going to assume that the gentleman from old Ward 8 has no sinister purposes from time to time in his efforts to attach to somebody or other some utterance which he never made but which can be useful five years hence, ten years hence, if distorted a little. And I presume that it was solely, — I will say that it was solely, — for the public good that he brought out this of somebody or other who shall be nameless having referred to some class of people as low down or something like that. Well, now, there is no question that he meant me and there is no question, — or I will not say that, — but perhaps five years from now, if I should be still alive and running for something down in the Lynn district, up would pop that utterance, misunderstood, and very useful to anybody who wanted to use it. Now what he accused me of was of saying that when the Poles came over to this country they were dirty, disreputable and immoral —

Mr. BASSETT of Taunton: Mr. Chairman, I rise to a point of order.

The CHAIRMAN: The gentleman will state a point of order.

Mr. BASSETT: The point of order is that the present personal remarks are not germane to the question before the committee. [Applause.]

The CHAIRMAN (Mr. Luce of Waltham): The discussion has taken a personal turn, which the Chair ventures to suggest is unfortunate, in

view of the very high plane that the debate hitherto has followed, and he ventures to suggest that harmony and good feeling will be advanced by resuming debate, if it is to be resumed at all, on the same level that it reached during the early part of the day. He hopes that gentlemen will confine themselves in their remarks to the question immediately before the committee, which in this case is the adoption of the motion to amend made by Mr. Bartlett of Newburyport.

Mr. BENNETT: I did not introduce this subject and I hope the gentleman from Ward 5 (Mr. Lomasney) will not introduce it and then run away. Now he accused me of saying that the Poles who came to this country were dirty, disreputable and immoral — [Laughter.]

The CHAIRMAN: The Chair would rule that the remarks of the gentleman from Saugus are not pertinent to the question under discussion, which is the amendment moved by Mr. Bartlett of Newburyport.

Mr. BENNETT: I hoped to avoid rising to a question of personal privilege, but if it is necessary in order to set myself right I will do so, and I will proceed upon either basis that the Chairman desires or insists upon.

The CHAIRMAN: The chairman understands that Mr. Bennett of Saugus rises to a question of personal privilege. He will state his question of personal privilege.

Mr. BENNETT: The question is this: The gentleman has introduced continuously the remark that I showed my lack of sympathy with his constituents by saying that the Poles who came to this country were dirty and disreputable and immoral, and that three generations changed them into native American citizens whom you could not tell from native born Yankees except that they had more children. Now, Mr. Chairman, I did not say anything of the kind of my own self, my own volition. What I did was to quote a friend who was raised in Iowa, and I quoted him as having said that, and if the gentleman before he tries to pick out five years hence when neither of us may be alive and prepares for the campaign of 1922, — if before he has done that he will have looked in the records of the stenographers he probably would have found that just as I stated it. I did not say anything of my own volition at all. I quoted a gentleman who was raised in Iowa and who had that experience, and it seemed to me a most excellent tribute to the character of this country, to its function which we advertise and eulogize so much as a melting-pot of humanity, — that that happened in that way. I do not suppose I have disposed of this; I have not disposed of it. It will be up next year and it will be dragged out of the card catalog of my friend who has such things ready for emergencies and will be used again. Mr. Chairman, that is all I have to say on the subject. [Cries of "Question."]

Mr. BARTLETT: Mr. Chairman, I did not think I was going to precipitate all this talk whem I moved that amendment and I hope the Convention will not visit it on me. I hope they will vote on that amendment on its merits as a simple act of justice.

The amendment moved by Mr. Bartlett of Newburyport, — that the new draft moved by Mr. Curtis be amended by adding at the end thereof the following: "But nothing herein contained shall prevent any city or town from

expending money raised by taxation or otherwise, in the education of its school children in any school approved by the school-committee and not under ecclesiastical or sectarian control", — was rejected.

The amendment moved by Mr. Bennett of Saugus, — that the new draft moved by Mr. Curtis be amended by striking out all after the word "expended", in line 17, — was rejected.

Mr. Scott Adams of Springfield moved that the new draft moved by Mr. Curtis be amended by inserting after the word "libraries", in line 33, the words "and museums connected therewith."

Mr. Adams of Springfield: I think it is unfortunate perhaps that this question should be interjected into the debate at this time, but if the Convention will bear with me I will be as brief as I can in making the point which I wish to call to their attention. In the first place, I believe in the amendment reported by the committee. I shall be glad to vote for it, I shall be glad to support it at the polls this fall if it goes to the voters, no matter what happens to the amendment which I now offer. In the second place, I should not presume to move this amendment if I thought it interfered with the principle adopted by the committee either in degree or in kind or if it were anything further than a perfecting amendment. Under the measure as reported libraries to which the public are admitted are excepted. In the city of Springfield there is a library association, chartered in 1864, officered by private individuals and by city officials *ex-officio*, which manages the City Library Association, which operates the City Library. This City Library Association holds property to the value of two million dollars, which it manages. It defrays its expenses partly from the income of its private funds and partly from appropriations given by the city of Springfield itself. It also is chartered for the purpose of maintaining public museums of natural history and art and in connection with its library does maintain such museums. These museums are entirely public, are used for educational purposes only, and are used by the same persons and to the same extent as the Springfield City Library is used. Both are absolutely free to all comers. But further than that, this whole amount, two million dollars or more, has been given to this Library Association on the condition that the city of Springfield, by appropriation from time to time, should defray the operating expenses of the association. As I read this amendment, the city of Springfield, if the amendment prevails, and I hope it will, may appropriate money to defray the operating expenses of the library only, but may not appropriate money to defray the operating expenses of the museums connected therewith, used exactly in the same way. It seems to me, Mr. Chairman, that the rule in one case is the rule in the other, and that the city in this case should be allowed to appropriate money to care for the immensely valuable collections which it has received from private donations upon the understanding, implied, of course, that it will do so.

Mr. Edwin U. Curtis of Boston: Just one word. The committee thanks Mr. Adams, is very grateful to Mr. Adams, for having called to its attention the question of libraries. We gave this question of museums careful and earnest thought. I believe Springfield is the only city in the State, and this museum the only museum, which would be affected by his amendment. Yet, gentlemen, having helped the libraries we think the city of Springfield can make an appropria-

tion for her library, and that other library funds can be used for the museum. We do not feel like giving up the principle.

Mr. Bosworth of Springfield: In behalf of the citizens of Springfield and a public library that for fifty years has been well known throughout the Union, in behalf of the men, many of whom are dead and gone, who have contributed large sums to the museums of that library, we are here speaking at this late hour. The entire State appropriations in several generations have been but around twenty million dollars to all the subjects we are discussing. Private citizens in Springfield have given more than ten per cent of that sum to the museums of the library upon the faith of a charter that if they would give, the city would keep and show. That is all that is required. That right is all that is asked. We say that this is a mere perfecting amendment, having nothing whatever to do with the great principles that are involved here in any way which can militate against them, and merely preserves the simple right to the city of Springfield to show some two million dollars' worth of property which has been given to a private charity on the faith of a charter which was granted long ago. That is all there is to it. It seems to me that the committee is straining at a very small gnat. We ask for but three words. From the mere fact that in the city of Springfield we happen to have men who have given very largely, some from their small means, some from their large means, there has grown in many respects one of the finest libraries in the State. Connected are two or three museums unequalled for their size perhaps in the country, perhaps in the world. And yet the committee say that from now on the city of Springfield, unless these collections are given to the city in some way which the donors who are now dead and gone never intended, shall not extend public help toward their exhibition.

Mr. Lomasney: If the Convention will pardon me, it is not only the city of Springfield that is affected. We have in Boston an art museum, and they have been trying for years to get an appropriation through the Legislature. They were defeated on several occasions. They tried to get it for several years, — $50,000 a year was the sum petitioned for. And there are other places. Now, there is no question but there are some odds and ends like these that are on the outside that are going to be affected somewhat, but coöperation will bring about the desired result. There is always a way if there is a will to overcome these slight differences; but if you let the bars down everything else will come in. You at once bring up a question about the Boston Art Museum and the other museums and a thousand other things which you do not realize. I hope the committee's report will be sustained.

Mr. Anderson of Newton: I should like to ask the gentleman from Springfield (Mr. Bosworth) through you, Mr. Chairman, if the art museum is not so closely connected with the library, that the appropriation for the library could be used for the art museum.

Mr. Bosworth: I would answer the gentleman from Newton (Mr. Anderson) that we are advised at the present time that that cannot well be done. It is costing the City Library Association to properly exhibit these large collections and show them to the public, — and there is no teaching connected with them, except through the public schools and other educational institutions, — because of the large

effort that is made to show these things and show them wisely, to the young people of the town, to the children in the schools, to teach all how to use these museums profitably, — it is costing approximately $10,000 a year. As I understand it, only about $2,000 annually of the funds of the library can be diverted toward that sum of $10,000. [Cries of "Question."]

The amendment moved by Mr. Adams of Springfield was rejected.

The amendment moved by Mr. Edwin U. Curtis of Boston, — that a new draft (See Document No. 338) be substituted, — was adopted; and, accordingly, the new draft was substituted; and it was voted that the Committee of the Whole report to the Convention recommending that the new draft ought to be adopted.

The proposed amendment of the Constitution, as recommended by the Committee of the Whole, was considered by the Convention Wednesday, July 25, 1917, and was ordered to a third reading after a short debate on the question of postponement.

It was next considered Friday, August 10, certain technical changes having been made by the committee on Form and Phraseology.

Mr. Lincoln Bryant of Milton offered the amendment cited at the beginning of the chapter.

Mr. Bryant of Milton: At the time this matter was in the Committee of the Whole, I, for one, was not entirely informed as to the nature of the obligations that had been undertaken by the Commonwealth in connection with the Massachusetts Institute of Technology and the Worcester Polytechnic Institute, and I have reason to believe that some other members of this Convention were not advised as to what the relations of the State and those two educational institutions are.

I desire to say that I have no affiliation with the Massachusetts Institute of Technology or with the Worcester Polytechnic Institute. I never went to either of them. As far as I know, I have no friends going to them now, and I have no relations of any kind, nor, as the expression is, do I hold a brief for either of them. But I do hold a brief, Mr. President, for the Commonwealth of Massachusetts, by virtue of my election to this body, and I cannot let this matter pass without saying a few words as to how it looks to me.

I do not at the present time intend to attempt to argue the main question of the sectarian amendment. I merely wish to state this. It is a compromise amendment. I think it is hardly necessary to argue that. On the one hand it provides that no funds shall be given to any sectarian institution; that is the first proposition. The second proposition is that no public funds shall be given in aid of any institution not under public control.

These are different and distinct propositions. One-half of the committee recommend very strongly the first proposition; but what do they say about the second proposition? That it is unimportant. The other half of the committee recommend very strongly the second half of the proposition. What do they say of the first half? That it makes very little difference. That is the kind of unanimous report that we have before us. I intend to make no comment upon it, but that is the situation.

Now, the second part of the amendment provides that no public funds shall be devoted to institutions not under the public control; and what arguments have been offered us in the discussion of this

matter that we can take back to our constituents to explain why we have adopted this part of the amendment? The main argument that has been offered us on this proposition is that in every single year from 1860 to 1916 there have been grants to worthy educational non-sectarian, — private, if you will, — institutions, and that up to date these grants amount to something like $19,000,000. This money has been granted to these institutions, because the Legislature believed that it was for the benefit of the Commonwealth so to grant it. If we examine the report that was issued by the commission appointed to compile information for our Convention, we find that between 1780 and 1860, there were 172 appropriations made by the Commonwealth of Massachusetts to various worthy educational and charitable institutions.

That, Mr. President, is the only argument I have heard that has been offered as to why we should refuse now to allow that policy to be carried on. What does that mean? If it means anything it means that the people of Massachusetts, speaking through their Legislature, have decreed time and time again their will to appropriate their public funds in aid of worthy institutions. Is there any proposition that has come or will come before this Convention on which we may hope to have a clearer, more definite, better sustained indication of the will of the people? Was any Constitutional Convention ever called which, with such short debate and with so little consideration, has assumed to deny to the people a power which, so long and so consistently, they had been exercising? In 1636 four hundred pounds was granted to Harvard College to sustain it, and ever since that day the people, in every way that they can possibly manifest it, have shown their desire to continue that policy. What are we going to say to our constituents when they ask us: "Why have you reversed the policy of the Commonwealth of Massachusetts? Who has assumed to barter the will of the people, and at what price?"

I am not arguing this proposition. I am merely stating the condition that seems to confront us.

> Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country.

Is that as true to-day as in 1780, when it was solemnly adopted by a Constitutional Convention and by the people? What are we going to say to our constituents when they ask us why we have sought to repeal that document? The educational institutions of this Commonwealth have been pictured to us as seeking something that they ought not to have, and we are told of the great sums that they have received as if it were something they ought not to have received. Is there any member of this Convention who really believes that they have not returned tenfold, yes, a hundredfold, every dollar which they have received in those voluntary gifts of the people? Have they not rendered to the people of Massachusetts services worth a hundred-

fold every dollar that has been given them to carry on their worthy enterprises?

In 1911, by chapter 78 of the Resolves of that year, the Legislature resolved that there should be paid annually to the Massachusetts Institute of Technology for the term of ten years the sum of $100,000, $1,000,000 in all, provided, first, that the last four payments should be conditional on gifts to the amount of $1,000,000 from outside the Institute; and, second, that the Institute of Technology should establish eighty free scholarships for the boys of Massachusetts. Subsequently, that $1,000,000 was contributed by citizens of Massachusetts, by citizens of the United States, by citizens from outside the United States, and the eighty free scholarships for boys were established.

It is not necessary to do more than to state the facts, to show that there is at least a strong moral obligation on the part of the Commonwealth to carry out the promise which has been made, and on the strength of which people all over this country, and outside the country, have contributed $1,000,000. Is it too much to say, as was said in an editorial in one of the recent papers, that "it would be preposterous to rest the present duty of the Commonwealth on any technical question as to whether the agreement made by the State amounted to a legally binding contract"? The moral obligations of the Commonwealth are too important to be thrown aside, and there is the strongest moral obligation for the Commonwealth of Massachusetts to live up to what it has said it will do.

But assume for a moment that there is a contract here, — and to be sure we have the opinions of several of the lawyers in this body that there is a contract. Of course everybody here knows, lawyer and layman alike, what a free opinion is worth. A free opinion is worth just what you pay for it. Some people think that no lawyer's opinion is of much value, but a free opinion is at best a mere off-hand opinion. There is but one opinion on which you can rely in this matter, and that is the opinion of a court of last resort, which, in this case, is the United States Supreme Court. That is the only opinion that is of real value. But assume, I say, that there is a contract, where does that leave the Commonwealth of Massachusetts? It leaves it in the position of a man who refuses to pay his debts until compelled to do so in the poor debtor's court, because there is just one tribunal that can compel the Commonwealth of Massachusetts to pay this obligation to the Institute of Technology and to the Worcester Polytechnic Institute, and that is the court. It means that we are solemnly, advisedly and deliberately repudiating the debts of Massachusetts. What a storm went over the country in the greenback days, when several Congressmen sought to repudiate the obligations of the United States! Are we doing anything more or less than repudiating the contract which the State has made? No Treasurer of Massachusetts, unless he has the decision of a court back of him, will ever dare pay the $400,000 still due to the Institute of Technology in the face of this direct prohibition of the proposed resolution:

> No grant, appropriation or use of public money, or property, shall be made or authorized for . . . any college, infirmary, hospital, institution or undertaking which is not under the exclusive control, order and superintendence of public officers.

What should we say if the Legislature of 1917 had seen fit to repeal the chapter 78 of the Resolves of 1911, and had come back home and

said: "Yes, we repealed it, but the Massachusetts Institute of Technology is protected by the provision of the United States Constitution that no State shall impair the obligation of a contract"? What should we say of legislators who assumed to do that and thought that their constituents would back them up in it? Should we not say that they were either knaves or fools, who had bartered the fair name of the Commonwealth in return for some consideration as to which the citizens of the Commonwealth were not consulted? Are we not as jealous of the good name of the Commonwealth as the Legislature? And I ask you to read the resolution, and say whether it is not a clear and direct repudiation of the debt. If the rights of those two institutes are saved under this resolution it is not by virtue of any honesty of purpose manifested in it, but because the great Commonwealth of Massachusetts will be dragged into court and told: "You shall not break your contract."

Mr. President, this case will be another Dartmouth College case. It is very well to say that the courts will read the debate which takes place here, and will assume that the members are sincere in saying that they have no intent to take away an honest dollar from anybody. That is very well to say. In my opinion, gentlemen, these debates will not even be read by the court, because the resolution is perfectly clear as it is, and therefore a court cannot go outside of its terms to construe into it something which is not there.

But assuming that some court will read the debates, how will the case stand in history? It will stand in history as the Dartmouth College case stands, that the Commonwealth of Massachusetts sought to take away from two worthy institutions their just and vested rights, deliberately and advisedly. Who now knows what debate went on in the Legislature of New Hampshire when the statute was passed which concerned that college? Who can tell me one word that was said then? All we know is that it was sought to deprive Dartmouth College of something to which it was entitled. A man is judged, not by his protestations, but by his deeds; a Constitutional Convention is judged, not by its eloquence, but by its acts; and the great Commonwealth of Massachusetts is judged, not by what its public servants say, but by what it does. And in this case it is repudiating its contract as clearly as it ever was attempted to repudiate the debts of the United States in the greenback legislation.

There is another consideration that I want to lay before you, and it is this: Are we going to put ourselves in the position of passing a resolution which we know to be in part at least unconstitutional? That is an extremely dangerous thing to do, and I want to refer to one case to illustrate my point.

In 1907 the Senate and House had under consideration an act which provided that no seller of any goods or machinery in the Commonwealth should make it a condition that the buyer should purchase other goods of him. I hope I make myself clear. No seller of merchandise or of machinery in the Commonwealth should say to the buyer: "I won't sell this to you unless you will buy certain other things of me."

The legislators were doubtful about the constitutionality of that act. They asked the opinion of the Supreme Judicial Court of Massachusetts. The point on which they were doubtful was this: Whether the

act did not impair patent rights which the United States had granted as to patented articles. Note that it made no special reference to patented articles. The majority of the court thought it did not impair rights on patented articles. The minority of the court said it did impair rights as to patented articles. But they all could have united on this proposition, for which authority was cited by the minority: That, assuming that it did impair rights as to that comparatively small number of articles covered by patents, the whole statute was unconstitutional. If you will compare the number of patented articles sold in the Commonwealth with the number of all other articles sold in the Commonwealth you will see how comparatively unimportant the sales of patented articles are. But that court would have found, and the minority did find, that, because the rights of the owners of this small group of articles were impaired, the entire statute, as to all sales, would be unconstitutional.

Where does that leave us, if we pass a resolution which we admit is in part unconstitutional, because contrary to the Constitution of the United States? Does it not leave the whole resolution in a very dangerous position, if we admit that, as referred to one set of circumstances, it is unconstitutional? I do not attempt to prove that in argument at this time, because this is not the place for extended legal dissertations; but why take that chance when it is unnecessary?

Now, Mr. President, I believe that the majority of the delegates here are entirely sincere in not desiring to do anything that will injure the fair name of Massachusetts or will deprive one institution of its just dues. But if we are sincere about that why not say so, and why not lay the question at rest forever? Is it just to compel the Massachusetts Institute of Technology and the Worcester Polytechnic Institute to go to the courts to get what everybody practically admits is their due under this statute? The amendment which I have offered does not alter the meaning of the wording of the statute one iota; nor is a syllable of the resolution as drafted, altered, and no part of the meaning is affected. If the friends of this resolution want it accepted by the people of the Commonwealth of Massachusetts why should they seek to pile up against it, when it comes before the people, not only the opposition of graduates of the Institute of Technology and of the Worcester Polytechnic Institute, — which perhaps somebody will say is selfish, — not only that, but the righteous indignation of every fair-minded man in the Commonwealth?

Mr. HART of Cambridge: Will the gentleman kindly read to the Convention the text of the statute of Massachusetts constituting the contract?

Mr. BRYANT: I should be very glad to, Mr. President. It is chapter 78 of the Resolves of 1911, and unless some gentleman asks me to I am not going to read the chapter in regard to the Worcester Polytechnic Institute, because it is exactly on all fours with the present resolve. If the delegate from Worcester (Mr. Washburn) desires to deal with that he can deal with it much better than I can. But simply to save the time of the Convention I shall not read the chapter relative to the Worcester Polytechnic Institute. The other is as follows:

Resolved, That there shall annually be paid from the treasury of the Commonwealth to the Massachusetts Institute of Technology, for the term of ten years, beginning with the first day of January in the year nineteen hundred and twelve, the

sum of one hundred thousand dollars, to be expended under the direction of the corporation of said Institute for the general purposes of the Institute: *Provided, however*, that the payment for the year nineteen hundred and seventeen and for the four following years shall be conditioned upon the presentation of satisfactory evidence to the Governor and Council that the said Massachusetts Institute of Technology has received, by bequest or gift from other sources, the sum of one million dollars in addition to all the funds held by it on the day of the approval of this resolve. In consideration of the said payments and during the continuance thereof, the Massachusetts Institute of Technology shall maintain eighty free scholarships to be granted by the Board of Education to residents, or minor children of residents of Massachusetts who, upon examination conducted under such rules and regulations as the president of the said Institute may prescribe, shall be found to possess the qualifications fixed for the admission of students to the Institute.

Mr. President, we have heard a great deal of talk in this Convention about the will of the people. That which you have just heard is the voice of the people. And I for one say, let us have done with calling on the name of the people if we cannot hear their voice when it speaks so clearly and distinctly; if we cannot hear that voice which is so sacred, Mr. President, that many members of this assembly think that even the Supreme Judicial Court of this Commonwealth should not question it, and so great an authority as the honorable district attorney for the United States in this district thinks that only a two-thirds majority of the Supreme Judicial Court should be allowed to question it. That is the voice which we have just heard. That is not any indefinite expression of some one's opinion as to this, that and the other will of the people, — that is the people's voice.

Now, Mr. President, this is an entirely friendly amendment.

Mr. Morton of Fall River: I should like to ask the gentleman one question, Mr. President. Was that act which he has read accepted by the Institute of Technology formally or impliedly?

Mr. Bryant: Mr. President, that act was accepted; there was no provision for the formal acceptance by a vote, but it was accepted by the Institute of Technology by going around all over the State, and all over the United States, and collecting this million dollars, with the statement that the good faith and credit of the Commonwealth of Massachusetts was behind this resolve to give another million dollars to the Institute of Technology. That is the situation that is coming right up before the voters when they look at this resolution. Will any fair-minded man have anything but indignation that we should try to impeach that fair, free gift to the Massachusetts Institute of Technology and to the Worcester Polytechnic Institute?

As I said, Mr. President, this is an entirely friendly amendment. It is offered in good faith. It is offered in part, of course, to save the rights of a just creditor of the Commonwealth, but it is offered mainly to save the good faith of the Commonwealth of Massachusetts. [Applause.]

Mr. Washburn of Worcester: I should not rise on this occasion to address the Convention unless the issue involved, in my opinion, was momentous. The issue involved in this proposition is nothing more nor less than the good faith of the Commonwealth of Massachusetts. There are two amendments pending to effect the same purpose, — one which I expected to offer myself, and the other which has been submitted by the gentleman from Milton (Mr. Bryant). Each one serves the purpose, which is to make certain that neither of the resolves upon the statute-books making appropriations for a term of ten

years to these two institutions shall be affected if perchance this anti-sectarian amendment is adopted by the Convention and ratified by the people at the polls.

I am not now discussing any other part of this amendment. The amendment of the gentleman from Milton does not affect the fundamental propositions contained in this so-called anti-sectarian amendment. I am here to make a plain statement, in plain words, as directly as I can, to the members of the Convention.

There is, I take it, nothing dearer to any man here than his own personal honor, unless it be the honor of the Commonwealth. What are these two resolves of which I speak? In the year 1911 the Massachusetts Institute of Technology found itself in financial straits, and applied to the General Court for aid. In conformity with the practice followed for many years, in varying degrees, the General Court responded by passing this resolve, chapter 78 of the Resolves of 1911, in which, — and I shall not read it, — are contained the following stipulations: That there shall be paid annually from the treasury of the Commonwealth to the Massachusetts Institute of Technology, for the term of ten years, $100,000 a year upon certain conditions. What were the conditions? That the Massachusetts Institute of Technology should maintain eighty free scholarships, to be awarded by the Board of Education. More than this, the act provided that the appropriation should not continue for a second term of five years unless meantime the Institute added a million dollars to its endowment. That condition has been complied with and certified to by the Governor and Council. And on what representation were those contributions solicited throughout the length and breadth of the land? I hold in my hand a letter from President Maclaurin of the Massachusetts Institute of Technology, which I will read to the Convention:

> The million dollars obtained by the Institute in order to comply with the conditions laid down by the Legislature in making a grant in 1911 was obtained from benefactors in almost every State in the Union. I had personal interviews or correspondence with all the larger contributors and in every case was asked what Massachusetts was doing for Technology, and in every case I referred to the Resolve of the Legislature in 1911. Smaller contributions came for the most part from appeals made by a committee of the alumni association which began its work immediately after the Governor signed the resolve of 1911, — a resolve which was made the basis of the campaign for funds.

The conditions were complied with on the part of the Massachusetts Institute of Technology.

The case of the Worcester Polytechnic Institute is on all fours with this, excepting that the number of the scholarships and the amounts of money involved were different. I myself know of one large personal contribution made to enable the Worcester Polytechnic Institute to comply with the condition that its endowment should be increased by a certain amount, if the appropriations from the State were to be continued for the second period of five years.

Now, what are the conditions? Four years of payment remain for the Massachusetts Institute of Technology and five for the Worcester Polytechnic Institute, involving in one case $400,000 and in the other case $250,000. I mention this part of the case incidentally because I am dealing primarily with the fundamental proposition of the good faith of the Commonwealth.

Mr. Powers of Newton: I should like to ask the gentleman from

Worcester whether in his opinion the arrangement made between the Commonwealth and the Massachusetts Institute of Technology, and also the arrangement made between the Commonwealth and the Worcester Polytechnic Institute, in his judgment amounted to contracts?

Mr. WASHBURN: If my friend will have patience I will come to that feature of the case at once.

Mr. POWERS: And there is another question I should like to ask; and that is whether, if we pass this resolution, the resolution would have the effect of repudiating the contract? In other words, if we pass this resolution may it not be that these contracts can still be carried out without interfering with the terms of the proposed contracts, or alleged contracts, made between the Commonwealth and these institutions?

Mr. WASHBURN: I welcome the questions. I was proposing to deal with them fully, and I hope satisfactorily.

When I was interrupted, Mr. President, I was about to say that the suggestion is made: "Why, this is a contract." It may be a contract or it may not. I am quite certain that if it were made between two individuals, members of this Convention, it would be a contract. But this is the precise way in which this matter will proceed. Suppose this anti-sectarian amendment is adopted by the Convention and is approved by the people at the polls. Next year when the legislative committee comes to make its appropriation of $100,000 for the Massachusetts Institute of Technology and $50,000 for the Worcester Polytechnic Institute, some one will say, — very properly perhaps: "You cannot make those appropriations because the constitutional amendment prevents it." Then some one says in reply: "Ah, but this is a contract." Then some third person asks: "How do you know it is a contract?" And then a fourth person on the committee is certain to ask: "Haven't we a right under the Constitution to ask for the opinion of the Supreme Judicial Court of Massachusetts?" And they ask for the opinion of the Supreme Judicial Court of Massachusetts; and the court, I hope and believe, would sustain it as a contract. But the court might say: "One Legislature cannot bind the next one; this is not a contract, although the consideration has been given." There would then be nothing left but a moral obligation, and the Legislature is in no condition to fulfil moral obligations in face of a constitutional amendment inhibiting any action.

Of course it is my contention that this is a contract; but I see no reason why, if any one expresses doubt, there should be any objection in any quarter to removing it. I do not ask to have the claims of these institutions made any stronger than they are, but I appeal to this Convention here assembled not in any way to weaken the obligation, and not to make it impossible for the Commonwealth to carry out an arrangement into which it has deliberately entered.

Does some one devoted to form rise and say: "Oh, a saving clause of this sort should not be appended to a constitutional amendment"? My reply is that in Massachusetts in times past substance has been regarded rather than form; and if this amendment, or any other that serves a like purpose, is adopted, it will be to the credit of the Convention and to the glory of Massachusetts that it is made clear that this Convention has favored no resolution, has taken no action, that

might weaken and perhaps destroy a sacred obligation of the Commonwealth.

Mr. LOMASNEY of Boston: It is with some diffidence that I rise to answer the arguments of these two lawyers, but the gentleman who has just taken his seat has distinctly stated that he believes this is a contract. He has stated that, and he believes it. Then is he afraid to trust our Supreme Judicial Court, or the Supreme Court of the Nation, to justly carry out the provisions of a sacred contract? I wonder if he is. But, Mr. President, of course he is not.

Now, he says he is simply asking to leave it as it is. Let us read his amendment and see what it says, page 2 of the calendar:

> Mr. Washburn of Worcester gives notice that he will move that the resolution be amended by adding the following: "Nothing in this amendment shall in any way affect Chapter 78 of the Acts and Resolves of 1911, being a Resolve in favor of the Massachusetts Institute of Technology, and Chapter 87 of the Acts and Resolves of 1912, being a Resolve in favor of the Worcester Polytechnic Institute."

What do the words "in any way" mean? Do they mean that thereafter, after this term is up, the Legislature can again appropriate $100,000 more for ten years? What is the meaning of these words "in any way"? Why, Mr. President, he says he does not want to help or hurt the proposition; he wants to have it stand. I submit to you, Mr. President, and to the lawyers of this Convention, and to the business men of this Convention, — and I will not make any reflections upon him, he is a business man, — if he would be justified, after a contract was signed and sealed, in adding anything to it, or would he expect it to stand as it stood when signed and sealed? That is the way business men do. That is the way every sensible man does.

They talk about the moral obligations of the Commonwealth. No one would question the moral obligations of the Commonwealth. Who started the Massachusetts Institute of Technology? The Commonwealth of Massachusetts gave them land on the Back Bay valued at $323,000, away back in 1863. That land to-day is worth $1,500,000 on the assessors' books, — from $323,000 to $1,500,000 is quite an increase and they have been in the Land Court and the Supreme Judicial Court trying to enforce rights not allowed by their title.

But let us see about the moral obligations. When they secured that grant there was a certain charter passed, in 1861. In 1863 they came before the Legislature and were relieved by chapter 226 of two sections of that act, — two sections, 8 and 9. I am not going to take the time to read them. And, Mr. President, I have here the figures, beginning with 1863, when they were given this land, then valued at $323,000, down to 1916, when the total they had received out of the Commonwealth of Massachusetts was $1,766,644.66. That is what the Commonwealth of Massachusetts has done for this institution, and who can question what Massachusetts intends to do? Of course the State intends to be fair. Is not that proven by what it has done? Who would think, what business man, what lawyer, if a person came to his rescue in business for fifty years, supplying him —

Mr. WASHBURN: I should like to ask Mr. Lomasney, who is versed in legislative ways, this simple question; and before I ask it I want to say to him that he is the first man with whom I ever came in contact who has suggested that the Supreme Judicial Court of Massachusetts and the Supreme Court of the United States were likely to follow any

opinion that I might express. [Laughter.] The question that I ask the gentleman in the third division is this: When next winter rolls round and the Legislature is convened and the committee on Ways and Means takes up the matter of continuing this annual appropriation, and some one raises the question that the appropriation cannot be made because of this constitutional amendment and the advice of the Supreme Judicial Court is asked, and the Supreme Judicial Court says that it is not a contract, let me ask the gentleman how the Legislature under those circumstances can make any further appropriation whatever to either of these institutions?

Mr. LOMASNEY: Why, Mr. President, the gentleman says it is a contract. He says he knows it is a contract and it was drawn by skilful lawyers for that purpose, and who can question that if it is a contract the Supreme Judicial Court will say so? That is what I said. He was asked the question by the gentleman from Newton (Mr. Powers) if he claimed it was a contract, and he said he did, and that he believed it was, but he said: "We want to be sure." Now here is a paper signed and sealed. Suppose you have a deed of a piece of property; it is on record and there is some question coming to trial affecting the title; what do you do when the question is before the court? Put some other statement on record to affect it? Of course you do not.

Now, Mr. President, that is the trouble and that has been the trouble all the way through. I have read his amendment. Hear what his amendment is. It states: "shall in any way" . . . . Now, I am not going to ask any question of him, but it seems to me that those words "shall in any way" after these five years are over might justify people saying in the Legislature that this constitutional amendment did not at all affect the Massachusetts Institute of Technology.

Mr. WASHBURN: I am greatly obliged to the gentleman for so courteously yielding, but if he finds so much to criticize in my amendment I want to ask him if he understands that that amendment is not before the Convention.

Mr. LOMASNEY: Does the gentleman now give notice that he will not move it? If he does I will not discuss it. It is on the calendar. [Applause.] So you see where I stand. Lawyer-like again, Mr. President, you see, he is playing with us on this matter, a pussy-cat in the corner. [Laughter.] Mr. President, I would not violate the moral obligation of Massachusetts for my life, nor would any other man in this Convention. [Applause.] But see where the other side of this argument would take us. He would have Massachusetts stop, do nothing here on this great question after the people elected us, and when the question of principle is involved, because that is the question, — the principle involved, — he would have us stop, do nothing and wait five years. Is that efficient government? Is that the kind of government they are teaching in this institution that he so ably represents, that this great State should stop its Constitutional Convention, should pause, do nothing, because forsooth they have an amendment, a kind of extending amendment? I do not think it is.

Now, Mr. President and gentlemen of the Convention, I do not like to go into this question in all its detail and state why this question is before us. I had no objection to these grants, I voted for them, and, Mr. President, I am not going to attack any of the insti-

tutions at all. But when the charitable institutions of the Commonwealth have come forward, and said gladly: "We will yield and comply with the enlightened sentiments of the State to-day and refrain from taking these public funds," it seems to me, Mr. President, that these gentlemen who represent these two institutions of higher learning in Massachusetts should recognize that they are not little tin gods any more than any one else.

Mr. President, there never was any trouble in the Convention of 1853 in dealing with the schools for the masses of the people. They very readily took care to make clear what they meant by common schools and they defined them as the schools for the masses. Then the trouble came because the classes wanted to tax the masses for their higher institutions of learning and control them to a certain extent, thereby going back to the old principle for which our Revolution was fought, — no taxation without representation. That is the one great principle here. We never had any trouble about our common schools. And now, Mr. President, pretty nearly every other trouble is cleaned up except with reference to these two institutions. And, without reflecting on the gentleman, in a way I intimated in the Committee of the Whole when this was under discussion before, how they worked, not improperly, to win their case. What man in this Convention now can stand up and say, unless he is kind of a holy man, that somebody has not met him in some way or other and said he was shocked to know that great injustice was being done by the noble Commonwealth of Massachusetts to the Massachusetts Institute of Technology or to the Worcester Polytechnic Institute; and he hoped for the good name of the old Bay State we should not break our contracts; we should stand by our moral obligations! You all know how hard it is to resist those men. But, Mr. President, there is more than the Institute involved in this matter. If it was only the Institute it would be another question. It is the principle that is at stake. How are you going to face the people of my faith and race, who for years have been supporting parochial schools for the children of the masses because of their conscientious obligations as they see them, when you take out of the public funds this money for education for the classes?

There is no question that this institution has done a great deal of work; there is no question that both institutions have done a great deal of good work. But have the students who have graduated from those institutions had any regard for the State that has done so much for them? Massachusetts started them on their way and gave them the land and that start enabled them to go forward. What is $100,000 to those graduates for five years, — $100,000 a year, $500,000, — when a principle like this is at stake, when Massachusetts is to have one kind of legislation for all, equal rights and equal opportunity for all? That is the principle here. Then why should these institutions come in and ask to be relieved?

Now, then, the second —

Mr. Richardson of Newton: If it is a fair question I should like to ask the member from Boston in the third division whether, if the anti-sectarian amendment passes in the present form, when this subject comes up in the Legislature next year he will cast his vote and use his well-known influence in favor of a continuation of the grants of

money during this term to the Massachusetts Institute of Technology and to the Worcester Polytechnic Institute?

Mr. LOMASNEY: I never make any promises like that. [Laughter.] How could the gentleman expect me, if the court says this was not a legal contract, to break my oath of office and fight and vote for it, if I am here? But you cannot tell who will be here, — who will be dead or who will be alive. Is the gentleman satisfied with that answer? [Laughter.]

Now, Mr. President, what was the attitude of another distinguished son of Massachusetts, the gentleman from the Back Bay, Mr. Parkman? Speaking for an institution that is ministering to the suffering, to the blind that they may see, to the deaf that they may hear, what was his attitude? They were giving up $50,000 a year, and, Mr. President, they were helping the masses, the children of the masses, restoring the sight to eyes which had been darkened. He said: "We recognize the principle in this matter. We recognize the principle in this resolution. We want Massachusetts to be one united State"; and he said: "We will ask no more State aid."

Now with due regard for every one, would not these gentlemen stand higher in the public estimation if they took the same stand? They cannot plead, Mr. President, that they have not the means, because we have given them $1,766,644.66 in cash besides the land.

Mr. WASHBURN: I have heard it said that the Massachusetts Institute of Technology has now an abundant income. I telephoned the treasurer yesterday and he told me that he was borrowing money now to pay running expenses, and further than that I may add that the demands of the war are so likely to deplete the rolls of scholars that the income from tuition is likely to be seriously interfered with. I do not like to suggest these collateral questions, but I must, — and I acknowledge the courtesy of the gentleman in the third division (Mr. Lomasney), — I must see, as far as I can, that the Convention receives a correct impression of the facts.

Mr. LOMASNEY: I also am familiar by reading the papers with the fact that there is a probability if not a certainty that they will get the revenue from the McKay millions. Where will they be then? Mr. President, there are these great men whom they have turned out, these men who are doing the work they are doing every day, who, because of that education, are not compelled to work in the mills, not to be stenographers, not to be lawyers, but maybe electrical engineers, and at the head of those great industries and activities that produce millions because of their brains. What one of those men is not going to be grateful to his mother, the Massachusetts Institute of Technology, that nursed him in his youth, that gave him his education? Why, you know, sir, that the reason they do not get the McKay millions at once is because of the rivalry between the two institutions, that the Technology boys say: "We don't want another institution to take us in; where would we be? We stand for the M. I. T." That is the reason that they are working every day to keep their institution alive with their contributions, because Massachusetts boys in my opinion are not ungrateful, and there is no graduate of that institution in my opinion who would not fight if the integrity of the institution was attacked. And if you put it up to them in this light: "It was a case of principle, we all had to yield something, we all were giving

something for the common good," I think their sense of patriotism would cause them to rise and say: "We will contribute the $100,000 a year." Five hundred thousand dollars, I think, is the total. If they did not, Mr. President, I should be compelled to say against my will that they are somewhat ungrateful. But I am not going to charge them with that now.

Now, Mr. President, the other gentleman's amendment. [Referring to the amendment proposed by Mr. Bryant of Milton.] He says: "Provided that nothing herein contained shall prevent the appropriation. . . ." And he wants us to believe that he is not changing the contract. Is not that a change of the contract? "Nothing herein contained shall prevent the appropriation and payment. . . ." Is not that a change of the contract? I am no lawyer, but it does not take much knowledge of law to see that that changes the entire question. Of course it changes the entire question. You cannot, Mr. President, — well, just a second; I hate to read from these books, but law is law. [Laughter.] The 1917 Manual, page 11, Constitution of the United States, Article I, Section 10 says:

> No State shall pass any law impairing the obligation of contracts.

Do you want any better law than that? "Shall not pass any law impairing the obligation of contracts." What does he want to substitute? That the Massachusetts Legislature, — let me get the exact words:

> Provided that nothing herein contained shall prevent the appropriation and payment to the Massachusetts Institute of Technology. . . .

Is not that a lawyer's contract, all written his own way? Has he any regard for the straight question there? Of course he has not. There is the straight law. No State shall pass any law "impairing the obligation of contracts." The Constitution of the United States does not allow you to do it. If you wanted to do it you could not do it. Their rights are safe. What is the danger, Mr. President? Let them go to the Legislature, ask them and put it up to them. It is an important question, Mr. President. It ought to be settled. And mind you, Mr. President, the gentleman from Worcester says he is satisfied it is a contract. The United States Constitution says you cannot pass a law impairing a contract. Then what are they here for? They are trying to get another twist on the rope, trying to get another twist of the halter to be surer. Of course you must defeat the amendment of the gentleman from Milton (Mr. Bryant) which says "you shall not prevent them," and also the other amendment which says "shall in any way" — both trying to do the same thing; only the gentleman from Worcester (Mr. Washburn) goes further, because I believe under his amendment they could come in at the end of the five years and have an even chance for asking some more of the people's money.

Now, Mr. President, I hope I have not taken up too much time, but here is what the figures show: The figures show that this Massachusetts Institute of Technology, as I said, has received $1,766,644.66 of the public money of Massachusetts. Now that is a nice sum of money. The Worcester Polytechnic Institute has received $575,000. Now, Mr. President, our direct debt is about $30,500,000. We have paid to

these two institutions a couple of millions. That is going some. Mr. President, there is a principle at stake now. I claim that in view of the present situation in Massachusetts the gentlemen representing these two institutions should be fair; they should rise to the occasion and say: "We recognize the condition. We believe we have a contract. We will do nothing to stop the passage of this amendment and we will leave our case to the courts." Because, Mr. President, they drew, mind you, this resolve themselves. They came before the Legislature with a petition. The Legislature did not send for them. They came to the Legislature with a petition. They drew the resolve, they made the form, they presented it, they submitted the facts and the Legislature took their resolve and passed it in the form as they gave it.

I submit, Mr. President, with all due regard for the legal side of this question, with all due regard for the moral side of this question, — because, it is very easy to use the words "moral obligation" with other men's money, — you have a right to pay your moral obligations with your own money, but you should go slow when you pay moral obligations with the people's money. You should treat the people's money just the same as you should the money of a trust estate, because in a sense you are trustees, and what man having a trust estate could put down on his return: "I paid out $20,000 for a moral obligation"? I question if the men in this Convention who handle large properties or lawyers who direct them would justify that. We should treat this case just the same and no differently between the State and these institutions as between man and man, because man to man all joined together is the State. And I say, Mr. President, that the amendments offered by the gentleman from Milton (Mr. Bryant) and the gentleman from Worcester (Mr. Washburn) go further than they claim they do. They absolutely take the stand that these institutions shall be exempted from this amendment, and that is why I say the amendments should not prevail. [Applause.]

Mr. Feiker of Northampton: It is furthest from my mind to interject any arguments against this resolution at the present time for the purpose of delay and it is only after due deliberate and careful consideration of this most important matter that I have decided to vote against the proposition contained in the so-called Curtis resolution. It probably will make no difference in the vote of this Convention as to whether or not I am so opposed, and it possibly may seem presumptuous on my part to enter my objections as against the arguments of such able and conscientious gentlemen who here so eloquently and clearly set forth their reasons why this Convention should pass this resolution to be submitted to the people for their approval as an amendment to the Constitution. But, sir, it is my privilege as a member of this Convention, representing the Second Congressional District, to present my reasons for taking issue with them on this most important resolution. I am more proud to-day to represent that district after hearing the eloquent and able remarks on the initiative and referendum made by my friend, a member of our delegation, in the third division, Mr. Churchill of Amherst. I believe, Mr. President and gentlemen, that our people of western Massachusetts are willing to pay him a tribute and I extend to him not only my own congratu-

lations but the congratulations of the people of western Massachusetts. It is a great honor and privilege to sit in this Convention among so many distinguished men.

It is also a very great responsibility which one carries. For not only must one keep pace if possible with the distinguished gentlemen, but one must be able also to decide, as a representative of the people, what he thinks is best for them in the way of amendment to the Constitution for their approval or disapproval by popular vote, — and there comes the great test.

I have listened with great care to what the distinguished gentlemen have said in regard to this matter and at no time have I heard from the lips of any one of them that there had been or has been any abuse of privilege under the Constitution, as it now stands, in the way of reckless and careless expenditure of moneys given by the Legislature to educational or charitable institutions which have received these benefits. They say that some $15,000,000 have been appropriated by the Legislature for such purposes, — what of that? Has one cent been expended carelessly or recklessly? I ask the Convention this question. If the answer is in the negative, then it seems to me that the system is not wrong and although millions have been spent, the results have been commensurate with the benefaction. But they say, although they do not begrudge the money and that none has been expended recklessly or carelessly, they are afraid that certain sectarian institutions will make a raid upon the public treasury and swamp the Legislature with requests for aid for their separate institutions.

I believe in a representative democracy and the Legislature as a fair and honest representation of the people. Some people harp upon and criticize its action, and some people say it is subject to prejudice and narrow-mindedness and that it lacks discretion; but I do not believe this. Great questions have been settled fairly and on the merits of the case. Can it be shown that in this case the Legislature has betrayed its trust? If the only reason for the passage of this resolution is that we are afraid of a raid on the public treasury through vote of the Legislature, I submit that this Convention should not give it a serious thought. Let us meet the issue fairly and squarely and not make any compromise. It is no question for compromise, and if the learned gentlemen think that the people will support such a compromise as is offered, I submit that they may be mistaken in their views.

Generally speaking, it will affect numberless institutions throughout the Commonwealth, which have been receiving aid and doing an infinite amount of good. Do you wish to cripple these institutions just because you are afraid some particular sect or creed is going to ask for aid? If they ask for it and are worthy, extend the hand of the Good Samaritan for the purpose of helping worthy persons who are in need and distress along the stony path of life. It makes no difference to me whether these institutions have my way of religious belief or not. I believe all religions do good. If you did not have them you would have to create a military power greater than Germany to-day (and God grant that such a thing never will happen). These institutions depend upon the aid and protection of this Commonwealth. This Commonwealth had inculcated into the minds of its people that these institutions would be fostered and protected for-

ever. Do not cripple them now by withdrawing assistance. Many will have to close the doors of education and charity if you do. If ever we needed their help, it is to-day.

Speaking for my constituency, which includes many cities and towns which have these institutions, I humbly submit that they are opposed to this resolution because of the adverse results. Particularly speaking, Northampton, my home city, would be hard hit if this resolution passes. Smith's Agricultural School, a vocational school, may come under it. I will not say that it does, but a sentence, word, or even punctuation, might deprive this great institution of over $15,000 of State and city money. Deerfield Academy, Hopkins Academy of Hadley, Springfield Museum, The Farm Bureau just established in all four western counties, and others too numerous to mention. Think twice before you vote for this resolution. Let your good judgment prevail. Cast aside all prejudice and rancor, all narrow-mindedness as far as religion is concerned, and leave it to your Legislature under the Constitution as it now stands to use discretion and good judgment in giving funds to aid institutions which come under this resolution, of whatsoever religion or charity they may represent.

Mr. President, I trust this resolution will be rejected, and that the Convention will take these remarks in the spirit in which they are offered, with the assurance that I have at heart only the best interests and welfare of the Commonwealth of Massachusetts. [Applause.]

Mr. Brackett of Arlington: Mr. President [applause], — I had no idea that this subject was coming up to-day and am therefore poorly prepared to speak upon it, as I intended to do when it was reached. My remarks accordingly will have to be impromptu.

I am in favor of the amendment offered by the gentleman from Milton (Mr. Bryant). If we do not adopt it we are liable to raise difficult questions, which we ought to avoid. What is the effect of a constitutional amendment upon a valid law already passed? We can, of course, by an amendment regulate future legislation. We can say what the Legislature may do or what it shall not do hereafter, but can we by a constitutional amendment annul a law which the Legislature had the constitutional right to enact at the time it enacted it and under which rights have arisen which would be affected by such an amendment? Such questions should be prevented, if possible, and to prevent them in this case we should adopt the amendment of the gentleman from Milton.

I do not support that amendment in any spirit of favoritism to the institutions to which it relates. I have no connection with them. The payments to them which have been authorized should not be regarded in any sense as charities. These two institutions are doing a great work and one which is of the highest importance to our industries and hence are entitled to our favorable consideration. In this connection consider for a moment the industrial condition of Massachusetts. We are losing, and to a large extent already have lost, that supremacy in manufacturing which the Commonwealth formerly enjoyed. At the south cotton mills are increasing, being built up largely with Massachusetts capital, and are entering into competition with our own factories in the cotton industry. In this competition they have certain advantages over us on account of their location. They are nearer

where the raw material is produced, nearer the coal mines, and therefore the expense for transportation of raw material and coal is less than that which the manufacturers of Massachusetts have to bear. The cost of production accordingly being less, they can sell their products at a lower price, which of course gives them an advantage.

Now, what is Massachusetts to do to offset this advantage? The effort should be made to produce by the greater technical skill of our people a class of fabrics which will bear the same relation to those made in other States which imported fabrics bear to home-made. You know that imported goods always command a higher price than domestic. Why is this? It is because of their superior quality, due to the greater technical skill of those engaged in their manufacture. And one of the industrial aims of Massachusetts should be to so educate her people that our manufactured products shall be as superior in quality to those of other States as foreign goods are to those made at home, so that by reason of that superiority they can be sold to people who want the best and will pay a higher price for fabrics bearing the stamp "made in Massachusetts" than for those made elsewhere. Ask any intelligent manufacturer of the Commonwealth as to his opinion of the work in this direction which is being done by these two institutions and he will tell you that it is of the greatest value to the industries of Massachusetts in providing that needed education. For these reasons we should be very careful, in acting upon the resolution before us, not to do anything which in any way will narrow the scope or lessen the efficiency of that work and thereby impair the industries which we all are interested in promoting. [Applause.]

Mr. Boyden of Deerfield moved the amendment cited at the beginning of the chapter.

Mr. Clapp of Lexington: I ask the Convention to give me, as a sincere advocate of the main principle of the Curtis amendment, an opportunity to go on record as in favor of the proviso embodied in the amendment moved by the delegate from Milton (Mr. Bryant). I want particularly to have the gentleman from Boston in the third division (Mr. Lomasney) hear the reason which I give. My relations with him and with the chairman of this committee (Mr. Edwin U. Curtis) have been very pleasant and each one of them will tell you that from the beginning I have earnestly supported the broad principles of their amendment; so that in what I say I speak as one in harmony with their general ideas.

Now the gentleman from Boston in the third division said the other day that if we once begin to let down the bars there is no knowing where we will end. That is a perfectly just statement so far as it relates to any exception that is intended to be permanent in its operation. Such is the nature of the exception moved by the delegate from Deerfield (Mr. Boyden), and therefore I shall oppose the adoption of that and I shall stand firm with the committee in its desire, — in its purpose, — to defeat all amendments which operate as permanent exceptions to the broad principles of the resolution. But such is not the fact with regard to the amendment to which I am speaking.

The delegate from Boston says that there is a principle involved here. Would it not be a more accurate statement, gentlemen of the Convention, to say that there are two principles involved here side by side? Now what are those principles? On the one hand it is the principle of the amendment itself, to prohibit hereafter the use of public funds for private purposes; but alongside that question, if you please, there is involved also the principle of the Commonwealth's standing by its agreement. Now I do not care whether that with which we are dealing is a *contract* protected by the United States Constitution or whether it is not. The result, in either case, would be the same, so far as my vote on this question is concerned. In the commercial world we have what we term as "gentlemen's agreements." Now, sir, this is at least a gentlemen's agreement. I am inclined to think myself that it is doubtful whether what has taken place between the Commonwealth and the Massachusetts Institute of Technology constitutes a binding contract; but as I say, it is at least a gentlemen's agreement and creates a moral obligation. Therefore the gentleman from Boston in the third division (Mr. Lomasney) should understand, and we should all understand, that there are two principles involved here side by side: On the one hand, the broad principle of the amendment; on the other hand, the question whether the Commonwealth shall stand by its moral obligations. And for that reason, Mr. President and gentlemen, I hope that we shall vote in favor of this proviso, which, as I have said, is not in its nature permanent; it is simply to go on two or three years, for a few years, until the obligation is performed, and then we shall come permanently under the operation of this great new principle which this amendment seeks to place in the fundamental law of the Commonwealth.

Mr. Morton of Fall River moved the amendment cited at the beginning of the chapter.

Mr. PILLSBURY of Wellesley: Let me ask my distinguished friend from Fall River whether he would accept, as a modification of his amendment, the substitution of the word "obligations" for the word "contract."

Mr. MORTON: Mr. President, I accept the modification suggested by my distinguished friend from Wellesley.

Mr. SWIG of Taunton: I should like to amend that by placing the word "legal" before the word "obligations."

Mr. EDWIN U. CURTIS of Boston: If the gentleman from Fall River will accept the word "legal" before "obligations," the committee on Bill of Rights is very glad indeed to accept his amendment. [Applause.]

Mr. MORTON: I do not know, Mr. President, whether you understood me to accept, as I intended to, the introduction of the word "legal", — "legal obligations."

Mr. George of Haverhill moved the amendment cited at the beginning of the chapter.

Mr. BRYANT: I know that the amendment offered by the gentleman from Fall River, as amended, is intended to accomplish exactly what I have intended to accomplish, but my only objection to it is that it still leaves the question open; it has to be proved in the courts

as to whether there is a contract or not; it still obliges these institutions to go possibly to the Supreme Court of the United States to obtain their rights under this amendment. Consequently there is the consideration that if this is not a legal contract it is nevertheless in the nature of a moral obligation. I am inclined, Mr. President, to accept the amendment. [Applause.] I have offered this mainly and almost entirely to protect the good faith of the Commonwealth of Massachusetts, and as it seems to be the opinion of gentlemen for whose opinion I have great respect that this does accomplish the purpose which I have been aiming at, I will give notice, Mr. President, that I am happy to accept the amendment. [Applause.]

Mr. Bryant withdrew his amendment.

Mr. BENNETT of Saugus: I should like a little better understanding of this matter. It seemed to me the good faith of Massachusetts was enlisted in a way, where we were doubtful whether it was a contract or whether it was a moral obligation, or, as the gentleman in the first division (Mr. Clapp) has said, a gentlemen's agreement. Now, we still are in doubt as to whether it is a contract or whether it is what he calls a gentlemen's agreement. I rejoiced when Mr. Pillsbury made the substitution "obligations", and it seemed to me that meant the whole case. Why not leave it "obligations"? Then somebody makes a motion to amend by putting in the word "legal". Well, now, do they not get it right back into a contract again? "Legal obligation"; a contract! Is a legal obligation anything but a contract? Well, Mr. President, I do not think we ought to have that amendment "legal". It is an obligation. The good faith of the Commonwealth is pledged, but none of us seems to know whether it is a contract or not. If it is not a contract, then the Massachusetts Institute of Technology does not get the money, and the good faith of the Commonwealth of Massachusetts is impugned all over the United States. I may be wrong. I have not an exact knowledge as to the force of the expression "legal obligation", but it does seem to me that we are simply putting this right back where the gentleman from Boston in the third division (Mr. Lomasney) had it in the first place, and we are not giving anything that the gentlemen are asking for in this amendment. I do not know as I understand it. I would like to understand it better, perhaps, but as I do understand it we are giving up the whole case absolutely if we put in that word "legal".

Mr. Lomasney moved that the resolution be amended by inserting before the word "agents", at [G], the word "public".

Mr. ANDERSON of Newton: I wish to offer three amendments in one. They are perfecting amendments, offered by the committee. I move to insert in line 22, after the words "institution of learning," at [B], the words ", whether under public control or otherwise," ; to insert in line 24, after the words "any other school," at [C], the words "or any"; and to insert in line 25, after the words "which is not", at [F], the words "publicly owned and".

Mr. SANFORD BATES of Boston: I desire to have an expression of the opinion of this Convention on the question as to whether they want the "legal" before the word "obligations". I therefore move, Mr. President, to amend this amended amendment, if it is in order.

by striking out the word "legal." I think, Mr. President and gentlemen, that the position of the gentleman from Saugus (Mr. Bennett) is absolutely right. We might as well do nothing in this amendment as put in the words in the way this amendment reads. If there is a contract the Supreme Court of the United States will uphold it; if there is no legal obligation then it will do absolutely no good to put those words in there. If the Commonwealth to-day desires to act in good faith and stand by its obligations let us show it; if not, let us not put in these highfalutin words about having the Commonwealth stand by its legal obligations. If there is one word that has an empty and hollow sound it is the word "legal." Let us not be put in the position of a Shylock, who always proposes to stand by the legal terms of his bond. If we mean anything else, let us say it; if we do not, let us have a distinct understanding as to what we do mean. I therefore move that the word "legal" be stricken out.

Mr. Washburn: The amendment suggested by the gentleman from Fall River (Mr. Morton) does not effect the purpose which I believe the majority of this Convention has in mind. I believe that a majority of this Convention is disposed to put the good faith of the Commonwealth beyond question, and, as I tried to point out in what I said a few moments ago, while I believe that this arrangement amounts to a contract with these two institutions, if, perchance, the Supreme Judicial Court should declare that it is not a contract, then I want to see the Legislature in position to carry out the moral obligation. For those reasons I am in favor of striking out the word "legal."

Mr. Brackett: I entirely concur with the last two speakers in striking out this word "legal." The suggestion of the gentleman from Wellesley that we put in that simple word "obligations," leaves it just where it should be left. Massachusetts should stand by its obligations, whether legal or moral.

Mr. Swig: The position of the committee on Bill of Rights in this matter does not need to be expounded with any debate or any flights of oratory. It is a very clear proposition. This Convention saw fit to refer this matter to the committee on Bill of Rights for their deliberation, and for days and days and days they gave their best thoughts and their best ability to the consideration of this proposition. The arguments that have been advanced here in regard to the two schools of technology were advanced before the committee, so that it is no new matter to them. And yet this committee, made up, as I contend, of men who had the good faith and honor and reputation and moral well-being of this Commonwealth at heart fully as much as any other members of this Convention, after due deliberation thought it was time to enunciate the principle that no public money should be given to any institution unless it was under public control, through public officers and public servants, and so they brought into this Convention the resolution that is under your consideration. Now, the very gentlemen who are advocating these amendments to exempt these schools do not find any fault with our general proposition; in fact, so far as I can learn, they favor it; but they want to make an exception, and they claim that while, to be sure, it is a contract, yet to make assurance doubly sure that they get the money that they want they ask you to make an exception in their favor, putting it on the ground of morals. No one would go any further than I for the morals of any case or of

any matter. But how about the morals of those other little schools and libraries and museums that we are cutting out? Has not the Commonwealth of Massachusetts led those little schools, those little academies and libraries and museums to believe that if they would conduct their institutions in a certain way they should be granted certain money by the Commonwealth of Massachusetts and have we not granted them that money, and have they not built up their institutions and made their plans accordingly? And now we are recommending that we take that money away from them. What about the morals in that kind of a case? Does it stand on any different footing than to say: "Well, in 1908 or 1912 we made an arrangement with the Massachusetts Institute of Technology whereby we should give them so much a year"? There, to be sure, is a definite amount. But we also said to these other schools and these other academies, and these museums and these hospitals, that we should give them some money every year so long as they conducted themselves in the way that they have; but yet no one rises here to talk about the morals of cutting out those institutions.

Mr. President, I feel that we will do a great injury to this measure if we except these two institutions just because they are powerful and large and great. I feel that if we except these two institutions, these little institutions, these small institutions, will rightfully rise up in their wrath and say: "How is it that you deprive us of money because we were poor and uninfluential and you have given it to those two institutions which are powerful and great?" Mr. President, I sincerely hope that this Convention will stand by the committee on Bill of Rights; that it will stand by the great principle which we have brought forth, and that is to give no money to any institution unless it is under public ownership and under public control. These institutions can do just as other institutions that were formerly conducted in the way that these technologies have been conducted have done; if they feel that they want the money from the public, let them become public institutions.

Mr. President, I sincerely hope, as I said before, that this Convention will back up its committee on Bill of Rights, which has given this matter due and deliberate, calm, sane consideration, uninfluenced by any pressure, or feeling, or passion, or sentiment. This committee has an affection for these institutions wholly as great as that of any other members of the Convention, but we had to report this matter irrespective of affection.

I hope that this Convention will ratify the action of this committee. [Applause.]

Mr. PILLSBURY of Wellesley: As I intend, Mr. President, to be entirely candid with the Convention on this and all occasions, I feel bound to say now, in view of what has transpired since I made my original suggestion to my friend from Fall River (Mr. Morton), that my very purpose in asking him to accept the word "obligations" in place of the word "contracts" was to let in the moral obligation which clearly exists in this case, which I believe this Convention recognizes and is disposed to affirm, and which I believe the Legislature will fulfil in due time if it can. I sincerely trust, therefore, fearing that the introduction of the qualifying word "legal" will defeat this purpose, that the motion of the gentleman from Boston in the first division (Mr. Sanford Bates) will prevail.

Mr. SULLIVAN of Lawrence: I should like to ask the gentleman who has just taken his seat if, assuming that the word "legal" were left out, in his opinion the court would recognize any obligation that is not a legal obligation.

Mr. PILLSBURY: If the word "obligations" stands without qualification, I think the Legislature will recognize and accept the moral obligation which plainly exists in this case, and there is at least a chance that the court would hold that action to be within the competence of the Legislature. It has been held more than once that moral obligation may warrant the appropriation of public moneys.

Mr. CLAPP: I sympathize with the purpose of the motion made by the gentleman from Boston in the first division (Mr. Sanford Bates), but is it not true that, if the motion prevails, you will open up to recognition by the Legislature all sorts of alleged moral obligations? It seems to me that the gentleman from Wellesley (Mr. Pillsbury) treats it as though it let in simply moral obligations under these two resolves pertaining to the Worcester Polytechnic Institute and the Massachusetts Institute of Technology. And I think that if we should strike out the word "legal", we should add some limitation so as to make the proviso say, in substance, that nothing shall prevent the Commonwealth from carrying out its obligations under these specified resolves, namely, 78 of 1911, 87 of 1912, — if I have got the numbers correctly.

Mr. FRENCH of Randolph: I am extremely sorry to differ with the delegate from Wellesley with regard to his construction of the word "obligation" as used in the Constitution or in any statute of Massachusetts. I feel that there ought not to be a moment's doubt in the mind of every member of this body that the word "obligation" used in this connection would be construed by the court to mean an obligation and an undertaking which can be enforced by law, and nothing else.

Mr. EDWIN U. CURTIS of Boston: I should like to offer an amendment for the committee, striking out, in lines 30 and 31, at [H], the words "libraries open to the public in any city or town", and inserting in place thereof the words "free public libraries."

[Subsequently, Mr. Curtis modified this amendment by omitting the words "in any city or town" from the words to be stricken out.]

When the able and astute lawyer of great experience, formerly Attorney-General of this Commonwealth (Mr. Pillsbury), who ordinarily sits beside me, offered his amendment to the motion of the respected former Justice of the Supreme Judicial Court, I was suspicious, and I was suspicious because he never had told me what he aimed at, never had given me any information as he did the other day when he tried to lay this measure on the table; and, gentlemen, I have learned to beware of the Greeks bearing gifts. [Applause.] I do not match my skill and my reputation as a lawyer against his, neither do I match my simple ways with his astute ways. If the gentleman from Taunton (Mr. Swig) had not put in the word "legal" I should have done so, and I should have done it to save the day until I had time to see what this meant. I tell you if you do not have that word "legal" in there you will rip the whole resolution up. [Applause.] I have not got through. There are other things mentioned, other institutions men-

tioned in this measure of ours. There are hospitals. There are infirmaries. There are institutions. There are colleges. There are academies. If there is a moral obligation for these two institutions why not a moral obligation for the academies in this State, and why have you not opened the door? I do not know whether that is what he meant or not, but that is what he would have accomplished. My friend here, the able lawyer, also saw it, and he told you what it meant. Now, I say, gentlemen, let us not vote on that amendment to-day. Let us adjourn and go home after the other gentlemen have made their arguments, and let this committee see what those words mean. Every time anybody has put a word into this measure, every time anybody has changed a sentence, we have found he has done something to injure it, and we do not propose to allow any of these astute gentlemen to put anything over us. [Laughter and applause.]

Mr. Washburn of Worcester offered the amendment cited at the beginning of the chapter.

Mr. Bryant: Sometimes as one grows older one grows wiser. I think when one does grow wiser one had better admit that he has been foolish and try to redeem his error. It seems to me, Mr. President, that my amendment can properly be offered, and I wish to offer it again. I observe from the discussion here that the object which I thought would be clearly accomplished by the amendment of the honorable gentleman from Fall River (Mr. Morton) apparently will not be accomplished. I have grown wiser, gentlemen. I am not used to parliamentary discussions, as you no doubt have noticed, but, Mr. President, if it is in order it seems to me that my amendment as drafted clears up all these questions. It is exactly what the majority of this Convention I believe wants to do. It preserves in two specific and perfectly clear cases the good faith of the Commonwealth of Massachusetts and does not raise all these questions which might be raised by the amendment of the gentleman from Fall River (Mr. Morton). I therefore offer my amendment [cited at the beginning of the chapter].

Mr. Richardson of Newton: I desire to offer an amendment to the amendment presented by Mr. Boyden of Deerfield, to alter that proposed amendment by adding after the word "academies", in the third line of the proposed amendment, the words "now existing."

Mr. Lomasney: When this matter was being discussed the delegates were listening to the views that were presented by the gentleman from Worcester (Mr. Washburn) and the gentleman from Milton (Mr. Bryant). The honorable former Justice of the Supreme Judicial Court (Mr. Morton) made a suggestion. His suggestion was as it was submitted to the committee. What man could be more interested in the good faith of Massachusetts and preserving it than a former Justice of the Supreme Judicial Court? [Applause.] Who should be given more consideration in this Convention than a man of his age and of his standing and experience and especially upon a question of law? And for what purpose? For the purpose of bringing this Convention out of a difficult situation into which it had arrived. No man can believe that he would suggest anything that was improper, that was not impartial; and he did not.

Now, what happened? A suggestion was made by the learned gentleman from Wellesley (Mr. Pillsbury), who is the most skilful

lawyer in this Convention in putting in words that mean something different. [Laughter and applause.] There is no question about that, Mr. President. It is to his credit. It is his brain. God Almighty has given him that faculty, and he sprang his amendment. And, Mr. President, if the gentleman from Taunton (Mr. Swig) had not put in the word "legal" I was on my feet to do it, because I know the gentleman from Wellesley so well. I realize he is an old fox. [Laughter and applause.] Mr. President, when the member from Milton (Mr. Bryant) stood up one moment ago and withdrew his amendment, I felt he acted as a true son of Massachusetts and did what his heart dictated to him on the proposition. But what did the astute gentleman from Worcester (Mr. Washburn) do? What did he do? Sat there tight on the job, talking for the institution with which he is connected, in which he is interested and for which he has done a great deal of work. Mr. President, I question, — mind you, I do not reflect upon his motives, — but I question if in the Legislature under those conditions he would have done that. But he sat there. For what? Not to do what was the greatest good for this old Commonwealth of Massachusetts. Not to coöperate and give and take something for this great principle; but to get his pound of flesh. And, Mr. President, when the learned former Justice of the Supreme Judicial Court accepted that amendment and with it, the word "legal", I thought, sir, that this Convention was through with that question, so I yielded. We all must yield at this time in the interest of the Commonwealth and in the interest of the principles for which we are now working, so that we can clean this situation up.

But what happened? The gentleman from Wellesley (Mr. Pillsbury) arose with an amendment and threw in the word "moral." I would like to see you, gentlemen, trying to get him, when representing interests as he does, to talk about putting through statutes which recognized moral obligations. [Laughter.] Ah, gentlemen, some men who, like him, are talking about moral obligations! Moral obligations, sir! Now, Mr. President, —

Mr. Sanford Bates of Boston: Mr. President, I rise to a point of order.

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

Mr. Bates: That it is improper for a gentleman to question the motives of another member of the Convention. [Applause.]

The President: The Chair rules that the point of order is well taken, and requests the member to refrain from any personalities.

Mr. Lomasney: I had no such intention. But who used the word "moral" first? Why, Mr. President, I am surprised at the gentleman from Dorchester (Mr. Sanford Bates). He is too sensitive. I did not impugn any one's motives. I have no desire to impugn the gentleman's motives. I was giving him standing as a lawyer of ability. [Great laughter and applause.] Mr. President, he has grown gray in the service. I do not see his familiar form round here any more, and I want to tell his old clients that he has still got a good punch.

Now, Mr. President, to be serious with this proposition, you now realize, what I told you when this matter was under debate in the Committee of the Whole, that these institutions have powerful friends. You have seen evidence of it all through this Convention. I pointed out to you when we started, that principle cuts no ice with these gentle-

men; they have no desire to help the Commonwealth, they have no desire to do the greatest good for the greatest number. They have a selfish purpose in this proposition, and that is to fool, if they can, — but I know they cannot, — this Convention into assuming that we are going to assail the fair name of Massachusetts and repudiate our honest, moral, legal obligations. Would you not leave all those questions to the gentleman from Fall River (Mr. Morton), the former Justice of the Supreme Judicial Court? His words were good enough for me and I was willing to take them, because, Mr. President, he specified "if there was a contract." The gentleman from Worcester (Mr. Washburn) said there *was* a contract. Assuming that there is such a contract, the gentleman from Newton (Mr. Powers) asks: "How can we take it away from you?" And then the gentleman from Fall River (Mr. Morton) put in those words: "and to carry out contracts if any already entered into". Who could object to that?

Now, then, sir, when he accepted the word "obligations" did he not recognize the purpose to comply with what the desires of this Convention and of the people of Massachusetts would be? He accepted the word "obligations", and then the word "legal" was accepted, making it read "legal obligations." As the gentleman from Randolph (Mr. French) said, obligations without the word "legal" would be construed as substantially the same. Now although I am no lawyer I know what precedents are, and the minute you start to read the word "moral" into your decisions is not that what they have been complaining of for years, the court reading into its decisions something that is not in the law? If you are trying to read the word "moral" in, Mr. President, put the word "moral" in and fight on this question of moral obligations, or else do as sensible men do, fight it on legal obligations. I hope, sir, that the word "legal" will not be stricken out, because if you start on moral obligations I am prepared to talk about moral obligations, Mr. President, not to a few students in institutions of higher learning, but to great masses of people of my race and religion, who, for principle, have stood up and paid for what they believed was right. If moral obligations are to be considered take the parochial schools of this State. See the amount of money they represent and see what it costs to educate the scholars, and then see what cities to-day would be almost bankrupt if these scholars were turned loose on them to be educated. I believe the State would have some moral obligations toward these schools that ought to be considered here before these two institutions that were founded and paid for out of the money of the common people of Massachusetts whose sons and daughters were given very few chances to obtain any benefits therefrom. I hope, sir, the motion will not prevail.

The discussion was resumed Wednesday, August 15.

Mr. Loring of Beverly: As chairman of the committee on Form and Phraseology I wish to say a few words relative to the amendments proposed by that committee; and I will say at the outset that it is merely explanation, and not advocacy, because this committee sits in a perfectly impartial manner, to see that the form of the proposed amendment is proper. As for the measure itself, it has no concern or opinion as a committee, and I am speaking now merely for the committee and in an entirely impartial manner. I call the

attention of the Convention to Rule No. 29, under which this committee works:

> The committee on Form and Phraseology shall examine and correct the proposals to amend the Constitution which are referred to it, for the purpose of avoiding repetitions, insuring accuracy in the text, and consistency: provided, that any change in the sense or legal effect or any material change in the construction shall be reported to the Convention as an amendment.

Under the latter part of the rule the committee has reported to the Convention two amendments. I will take up the smaller of the two amendments first, and that is where it changes the phrase "for libraries open to the public" to "for free public libraries." It seemed to the committee that there is a distinct difference between the meaning of the two phrases. While it supposed that the committee on Bill of Rights meant "free public libraries", it was not sure, and therefore suggested this change as an amendment.

A library open to the public is any library into which the public at the present time can go. For instance, the library of the Genealogical Society is a library open to the public. The committee did not suppose it was the intention to include a library of that character among libraries which should reap the benefit of State aid. It supposed, however, that it was such a library as, for instance, the library in Springfield, which, although controlled not by State officials or town officials, is held in trust for the public by the officials who control it. That is, the public has a beneficial interest in that library which it could enforce, and therefore the committee thought it would be amply covered by the phrase "free public libraries," and so suggested that phrase as an amendment. This phrase I understand is agreeable to the committee which reported the measure, and has been moved by the chairman as an amendment to the measure as reported on pages 5 and 6 of the document No. 347.

The other amendment which the committee proposes was so near the line that it did not know whether it should report it as a report of the committee or report it as an amendment, but in order not to transgress its power it decided to report it as an amendment.

Instead of repealing the eighteenth amendment to the Constitution, the committee thought it was advisable to let that article stand, and to propose this as the forty-fifth article of amendment to the Constitution. As the proposition came to the committee, the eighteenth article of amendment to the Constitution was repealed, and all of it was reënacted except the last two lines, which would have been superseded by the new amendment as proposed. It seemed to the committee that this was unnecessarily complicating the situation; that if the matter ever came before the voters they would be very doubtful as to what was meant by first repealing the eighteenth article and then reënacting the greater part of it; they would wonder if there was any "joker" there; very few of them would have a handy pocket edition of the Constitution to refer to, and the committee thought it would be puzzling to them and make them very doubtful as to what the real purport was, first to repeal this section of the Constitution and then reënact it. It seemed to the committee that the best course was to leave the eighteenth article of amendment to the Constitution just as it stands, with the rulings and the interpretations which the court has given it, which also would stand with the article. If the article is re-

pealed and reënacted, although substantially in the same language, it does not follow that the decisions would remain the same, because it is not reënacted in its entirety. Then, also, you save in repetition.

As the measure came to the committee most of the new matter, — and it was supposed to be all the new matter, — was in capitals; but the very first sentence, that is to say, "No law shall be passed prohibiting the free exercise of religion," was printed in small print, and with no stop, just as if it was a part of the original eighteenth amendment to the Constitution. Of course it was an entirely different proposition. That was misleading, I have no doubt, to a great many people who read the measure casually, and it would be very misleading I think to the average voter. It seemed therefore to the committee that the measure as reported on pages 8 and 9 of document No. 347 was very much more succinct and better, and one that would be more likely to receive a favorable vote from the voter, and be more easily understood, than the more complicated provision which, in the first place, repeals the eighteenth article of amendment to the Constitution and then proceeds to reënact part of it.

Now, as a matter of personal feeling about the measure itself, it seems to me that, as any one who studies it will see, it covers two perfectly distinct propositions. The first proposition is contained in section 1 of the committee's report:

> No law shall be passed prohibiting the free exercise of religion.

That is a perfectly distinct proposition. Then it goes on to say that money shall not be appropriated for sectarian purposes. I think that it is perhaps entirely proper that the two should be conjoined, and I do hope that the measure will pass. But as far as the committee is concerned the parentage of the measure is not very important. The committee acts in an obstetric capacity, but does not want to see any propositions going before the voters that are cross-eyed, snag-toothed or double-jointed.

Mr. Edwin U. Curtis: I did not intend at this time to explain my amendment; but as it is before the Convention now, I will read a statement of the committee in regard to that amendment in order that it may go into the record for future use.

The question is upon the meaning of the words "free public libraries in any city or town." It will be noted that this is one of the *exceptions* to the operation of the principle of our proposal. That principle is, in brief, that no appropriation of public money shall be made to any private institution, and then come the *exceptions:* first, the Soldiers' Home; and then, the free public libraries. It is therefore immediately evident that the word *public* in this phrase cannot be used in the sense, publicly owned or publicly controlled, as it is elsewhere in our proposal, for the very fact that it is an exception shows that the libraries in question are wholly or in part under private control. The word *public* in this phrase must then mean founded and primarily intended for the public, open to the public, just as we speak of the public waiting-room in a railway station. The very object of the exception is to allow appropriations of public money to libraries which are wholly or in part under private control. The only reason we have for seeking to change the wording of the report of the committee on Form and Phraseology at this point is that their phrase "libraries

open to the public," would allow appropriations for the library of a theological seminary or of a private college, if open to the public, as most of them are.

Mr. Boyden of Deerfield moved the amendment printed at the beginning of the chapter.

Mr. Boyden: In speaking before this Convention at this time and in view of the general sentiment which seems to prevail I feel somewhat as I did three or four years ago when going to Amherst on the trolley car with the superintendent of schools from a neighboring town. The superintendent had his son with him, a boy of about fifteen, who was sitting in the seat behind us. When the conductor came along the superintendent gave him ten cents for himself and for the boy, and when I tried to pay my fare the conductor said: "Your father paid for you." [Laughter.]

It is not my intention this morning, and it has not been at any time, to endeavor to embarrass the work of the committee; and regardless of what the attitude of the Convention may be toward this particular amendment it will in no way affect my vote at a later period. I wish to especially thank the committee, as a committee and individually, for the extreme courtesy and kindness with which they have listened to me during the past two weeks. But I should like to call to your careful and thoughtful consideration a class of institutions which in the past has done much for the education of Massachusetts, and which is still doing a great work in the country sections, — a class of institutions probably not very well known to most of us, particularly those from the cities. The question involved in this amendment is not one of the schools, but it is one of the towns. It is not a question of aiding the academies, it is a question of helping out the towns, which are already heavily burdened by taxation.

Now, just a word or two about these schools. Years ago there were many of them scattered all over the State, but the adoption of the public high school system rather did away with the need for them, and so gradually these institutions have become simply the public high schools for the towns in which they exist. That is, they are not private institutions, like Groton or Andover, or many of the other excellent private schools that we have, but in reality are the free public high schools of the towns in which they exist, and are so recognized by the Board of Education.

Now, with regard to this amendment. When we first put this amendment in it was similar to the one concerning the libraries, because the situation is practically the same. But I found that some people did not understand it, and certain members were willing to support it provided we limited it to towns, thereby shutting off any possibility of any aid from the State. Therefore in the beginning we say: "nothing herein contained shall be construed to prevent any town from raising and appropriating money." It is limited also to towns in which there is no public high school. Therefore you see there are very few towns to which it can possibly apply. We also say: "wherein no denominational doctrine is inculcated." That was put in at the suggestion of a certain member of the Convention; and whatever the interpretation of that phrase may be on the part of those in authority, whatever interpretation is applied to the public

high schools, the same will apply to our academies as long as we receive any public money.

Then to take up for a moment the legal situation, — and this is the real serious part of the whole question. The State has decreed that every town with over 500 families shall maintain a high school unless specifically exempted. Those towns which are specifically exempted are those, among others, in which these academies exist, and they are exempted because these schools are of equal or corresponding grade with the public high schools. The State also guarantees to every single child within the Commonwealth a free high school education. But a decree of the Supreme Judicial Court states that while these schools are in existence it is impossible for any child in any of these towns to secure the free high school education guaranteed by the State in any other institution save in these. That is, we must send our children to these institutions, and yet we cannot appropriate any money so as to make them the type of schools that we want our children to attend. Now, gentlemen, does that seem really a fair state or condition to exist in connection with these towns?

These academies form a complete group exactly as the libraries do. They are recognized by the Board of Education as the public high schools of these towns. This amendment is limited to towns without high schools and provides the same sectarian restrictions as apply to our public schools. It does not permit of State aid but simply allows this group of towns to tax themselves, if they so vote, for the support of the only institution in which they can secure a free high school education for their children.

Gentlemen, there is a real need for some help for our country towns and we hope that the Convention, if it feels it can do so without injury to the main amendment, will give our cause most careful consideration. [Applause.]

Mr. Powers of Newton: Section two of Article XVIII provides that all money raised by taxation in the cities and towns and all money contributed by the State shall be expended in the cities and towns in which it is to be used under the order and superintendence of the local board of education. This question came up for discussion in the Convention of 1853. At that time the Commonwealth was giving very little aid to the cities and towns for public education. Times have changed within the last sixty-four years and to-day the State is called upon to aid these communities that are less fortunate in the raising of money for common school education. We have in Massachusetts to-day the situation of certain wealthy towns that are able to provide a system of public education upon a very much higher standard than is provided in other cities and towns. The disparity in the quality of education that is furnished in the different parts of the State is becoming wider and wider as time goes on, and the Commonwealth is going to be called upon in years to come to furnish money to the towns and cities where the taxation does not provide sufficient money to keep up the schools in the manner in which they should be kept up. I think it is fair to say that the trend of the times is toward establishing in Massachusetts a standard of education that shall be substantially equal throughout the Commonwealth; in other words, that the small towns and the manufacturing towns shall be permitted by aid from the Commonwealth to maintain schools of the

same efficiency as those that are maintained in those localities where the taxation yields a larger return. And so as time goes on these little academies to which the gentleman from Deerfield (Mr. Boyden) has referred are probably going to become weaker and weaker; these great technical schools that have been established by the generosity of noble men and women are gradually going to become weaker as time goes on, for the very reason that State aid is to be withdrawn from their support.

Now what is going to be the result, Mr. President? We are gradually going to come, so far as public education is concerned, to adopt the system that has been adopted with so much success in the middle west and in the far west. I would predict that before this century closes the Commonwealth of Massachusetts will maintain a State institution, — that is, a State University, not unlike the great University of Wisconsin and those great universities of Michigan, Illinois and Indiana. And the reason for that is that they bring about a harmony in education that you get in no other way. The difficulty that we have in Massachusetts to-day is that no two colleges require the same entrance examination. The difficulty comes that the public high school finds great trouble in preparing students for entrance into all the colleges. In some of these high schools you find three different systems. If the boy is to enter Harvard University he has to have one kind of preparation; if he is to enter Amherst College he has to have another; if he is to enter some other college he has to have another; and the result is that there is no harmony to-day in our educational system.

Now there is absolute harmony in the public educational systems of the middle west. From the time that the child enters the kindergarten way up through until he completes his course in the University and takes his post-graduate course it is one harmonious standard from beginning to end.

Now the passage of this, — what is called the sectarian amendment; and I am in full sympathy with it, — places Massachusetts in the position that we no longer can aid the little academy and the private college. It seems to go partly on the theory that these academies and these colleges under private control are a business by themselves. But I want to pay my tribute at this time, Mr. President, to those men and women who have given of their money to establish these little academies and to establish these colleges and these great universities in order that the youth of New England might be educated. And if it had not been for them they would not have received the education, because the public would not have furnished the education. Around these academies and these colleges cluster very tender associations, great traditions of which we are all proud; but we might as well recognize the trend of the times, and that it is toward public education.

Now, the second section of the eighteenth article makes no provision whatever for the State to have any control over grants which it makes to the various cities and towns. In other words, if the Legislature decides to appropriate $1,000,000 to help out schools in the manufacturing centers and the small towns it has not the slightest control over that grant; and it seems to me that this Convention ought not to adjourn until it amends in some way that section or

that article so that the State, in the years to come when it makes these large grants, as it is bound to do, will have some supervision over the expenditure of that money. And I am going to offer at this time an amendment which is in no way hostile to the proposition we have under consideration, but which provides that the Commonwealth may have such supervision over the money it appropriates for the cities and towns as the Legislature decides to direct. The amendment reads:

Amend by adding after the word "expended" in the eighteenth line of section 2, Article XVIII, the words "or of such State authorities as the General Court may direct."

If that amendment is adopted the section will then read:

SECTION 2. All moneys raised by taxation in the towns and cities for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools shall be applied to, and expended in, no other schools than those which are conducted according to law, under the order and superintendence of the authorities of the city or town in which the money is expended or of such State authorities as the General Court may direct; . . .

In other words, by that amendment we leave the Legislature free to give such directions as it may see fit in the way of supervision over the grant which the State makes.

Now my belief is that that is absolutely in the interests of education and my belief is that it would be a harm to the Commonwealth if the Legislature were to have no control of, and could not impose a single condition upon, the appropriations of the State money which is to be used for public education in these cities and towns. I bring this amendment to you with the approval of the Board of Education. We feel very strongly that this amendment ought to be adopted. I am perfectly well aware that some one may say: "Is it the purpose of this amendment to interfere with local control of the schools?" Not at all. The only purpose of it is to allow the Legislature to impose such conditions in the grant relative to the expenditure of this money and such supervision as the State may regard as wise for the general benefit of public education. And when you bear in mind, Mr. President, when you bear in mind that the trend of the times is toward State education and State control, I feel that this amendment ought to have the approval of the Convention.

Mr. GEORGE of Haverhill: I have understood that this proposition involves a very delicate question, so much so that we cannot discuss it with that frankness that we usually use in discussing other public questions. For instance, if we should pass a truly non-sectarian amendment, some one would feel that it hit him. Now, Mr. President, I think that I can approach this subject as a neutral. I am not speaking about this boastfully, but I have no affiliation with any denomination and I am in favor of the broadest freedom for all religious societies; and I believe that I am stating a fact when I say that I believe in American institutions; that the church is an American institution, and the American church of every denomination is stronger in the United States than in any other nation in the world, simply because it is independent and free. Therefore I have no feelings of hostility toward any religious sect or toward any church or society.

I am in favor, Mr. President, of closing the door of opportunity to inject religious discussions into our political affairs; and I am not

actuated, Mr. President, by any feelings of bigotry, for it is twenty years ago this very year, in this hall, that I bolted the nomination of my party for Clerk of the House of Representatives, and voted for the man who was and had been the best State official who ever served in any capacity in the Commonwealth of Massachusetts; and I voted for that person because of the fact that they had brought in religious and racial questions in order to defeat a competent man, and that was used purely for political purposes.

At a later date, Mr. President, I opposed a resolve that was offered on a petition for the benefit of Carney Hospital. I did not oppose that because it was Carney Hospital, and I did not oppose it on the ground that my friend from Saugus (Mr. Bennett) said the other day that he supported it. He said he supported it because it was a charitable institution. So it is. I was asked to support it because the man who introduced the petition had no connection with Carney Hospital, and no person connected with Carney Hospital asked for the appropriation. But the man who introduced the petition was a Senator and a colleague of mine, and it so happened that that resolve came before my committee, and it so happened that my committee reported against it; and the reason why he wanted us to pass that resolve to appropriate $10,000 for this hospital was because it was to help him get elected alderman the next year in Boston. Now, he got the resolve through and he was elected. I did not think that it was worth $10,000 to the Commonwealth of Massachusetts to elect him. It may have been worth $10,000 to the city of Boston; I know not; but there was no reason why the Commonwealth of Massachusetts should pay it.

Now, the charity in that case was a by-product, just the same as the horns and hoofs of a steer that is led to slaughter. The first proposition was to get that resolve through for political purposes; and I honestly believe, Mr. President, that this resolve as it stands now is going through for the same purpose. It is purely a political proposition, and nothing more.

It seems to me that it would be well for us to first ascertain what the status of the church and State is. I understand among the functions of government, as we understand it here in Massachusetts, that it is the duty of the government to protect life and property. It is the duty of the government to afford, as we understand it in Massachusetts, free public schools to all the children of the Commonwealth. It is also the function of government to care for the poor, to care for the needy, to care for the afflicted.

Now, what is the status of the church? The church is instituted for a religious purpose. It is instituted to propagate its faith. It is true that it erects and establishes schools. It is true that it erects and establishes hospitals. But I submit, Mr. President, that when it assumes the functions of the government, when it establishes religious hospitals, religious schools, there is no moral obligation why the Commonwealth of Massachusetts should make appropriations to support schools and hospitals that are run by the Methodist Church, the Universalist Church, the Unitarian Church, or any other church, and I believe that it is time for us to pass a resolve that really means what it says.

It has been said that this is such a delicate question that we cannot do things here without offending people. I want to call your attention

to what was done in the State of Maryland. Maryland is a religious State, but they have had difficulties, they have had troubles; and many years ago those people in Convention, and the people at large, had the courage to treat the situation, and they treated it more radically than we intend to treat it, but they treated it in a way, as they thought, which would prove efficacious. The Constitution of Maryland, Article 3, Section 11, provides:

No minister or preacher of the Gospel, or of any religious creed or denomination, and no person holding any civil office of profit or trust under this State, except justices of the peace, shall be eligible as Senator or Delegate.

Now, Mr. President, the late William Paret, the great Episcopal bishop in the State of Maryland, did not think that was directed against him or his religion. Bishop Wilson, the bishop of the Methodist Church, did not think that was directed against him or his religion. That great American who has done more to help sustain American institutions than any other man living in this country, James Cardinal Gibbons, did not think that it was directed against him or his religion. It was thought that by passing that resolve, as strange as it may seem to us, it would eliminate the possibility of acrimonious discussions in the Legislature, which would be most harmful, as it had proved to be most harmful in the early history of the State.

Mr. President, other States have taken this matter up, and let me show you how they deal with this proposition. Arizona has an article in its Constitution which reads like this:

No public money or property shall be appropriated for or applied to any religious worship, exercise, or instruction, or to the support of any religious establishment.

Florida provides:

No preference shall be given by law to any church, sect or mode of worship, and no money shall ever be taken from the public treasury directly or indirectly in aid of any church, sect or religious denomination, or in aid of any sectarian institution.

Georgia provides:

No money shall ever be taken from the public treasury, directly or indirectly, in aid of any church, sect or denomination of religionists, or of any sectarian institution.

Indiana provides:

No money shall be drawn from the treasury for the benefit of any religious or theological institution.

Mississippi provides:

No law granting a donation, or gratuity, in favor of any person or object shall be enacted, except by the concurrence of two-thirds of each branch of the Legislature, nor by any vote for a sectarian purpose or use.

Nevada provides:

No public funds of any kind or character whatever, State, county, or municipal, shall be used for sectarian purposes.

New Hampshire provides:

No money raised by taxation shall ever be granted or applied for the use of the schools or institutions of any religious sect or denomination.

And there are other States. I will not undertake to read them, but I want to call your attention to them because there are States which have had the courage to take this question up and deal with it and apply a remedy which lasts forever.

As I understand it, Mr. President, there were two propositions that came into this Convention. One was an anti-sectarian amendment, and another an amendment which sought to prevent the appropriation of any public money to non-sectarian institutions. In other words, because there was a public demand for an anti-sectarian amendment, they immediately said that there must be a demand for an amendment which should prohibit the passage of any law appropriating money for any other institution.

Now, Mr. President, I do not understand that that is the case, and I do not understand that there is any public demand for the resolution before us. I do not understand that there was a single human being who came before the committee on Bill of Rights and said that the textile schools ought not to receive aid from the Commonwealth of Massachusetts. I do not believe there was a single person who came before the committee on Bill of Rights and said that the ten agricultural counties in this State should not have the right to pass appropriations to promote agriculture. I do not believe that there was anybody who came before that committee who raised the slightest question against continuing the present contract with the Worcester Polytechnic Institute or the Massachusetts Institute of Technology. I do not believe there was a single person who came before the committee and offered the slightest objection to allowing these towns that are so poor that they cannot erect and maintain a public high school to contribute to the expense of those scholars attending higher institutions of learning, such as the academies that have been mentioned in this debate; and I am quite sure that nobody came here to ask us to refuse to permit appropriations to be made to support public libraries.

Now, I have sought to divide this proposition. If you will look at the Convention Document No. 341, — the one that I propose, — that refers to the first part of the proposition, which deals entirely with the sectarian amendment. I have sought to amend Article XI, which was an amendment of Article III of Part 2 of the Bill of Rights. This proposed resolution which is before you does not amend the Bill of Rights. There is nothing in the Bill of Rights that says anything about schools, there is nothing in the Bill of Rights that says anything about infirmaries or hospitals or colleges. That deals with a proposition entirely outside the Bill of Rights. The proposal before us seeks to round up everything there is outside the Bill of Rights.

Now, my proposition is to divide this question. Let us meet this question by amending Article XI, which is practically the same as now, except the last dozen lines; and then, at a later day, I have given notice that I shall move to substitute document No. 340 for the report "leave to withdraw" on document No. 263. Then all these other questions, — the question of institutions, the question of colleges, the question of agriculture, — can be taken up and discussed on their merits without bringing in any question that affects religion. It seems to me that we ought to do this, and the people are entitled to have this done. If you will look at Rule 43 you will see it provides that any member of this Convention can ask to have a question divided if the question is divisible. Why? So that we can have an intelligent method of voting. But when we put these two questions up to the public the people have no right to ask to have this question

divided. They have got to take the whole or nothing. It seems to me that they are entitled to this; and I should not object, Mr. President, if this entire question could go in two forms. Let them vote on the sectarian question, and then let them vote on the question of whether or no they want to stop all appropriations for all institutions, sectarian and non-sectarian alike.

While this proposed resolution does a great many things, it leaves a great many things open. Among the statements that have been made is the statement that it would take religion out of politics. I presume there are members of this Convention who actually believe that under this resolution we cannot make an appropriation for a sectarian institution. That is not true. Let us read section 3:

> Nothing herein contained shall be construed to prevent the Commonwealth, or any political division thereof, from paying to privately controlled hospitals, infirmaries, or institutions for the deaf, dumb or blind not more than the ordinary and reasonable compensation for care or support actually rendered or furnished by such hospitals, infirmaries or institutions to such persons as may be in whole or in part unable to support or care for themselves.

Now, I understand that under this proposal it is possible for the Legislature of this Commonwealth to pass an appropriation that will cover the expenses of a hundred patients at the New England Baptist Hospital in Brookline, at the rate of $10 a week per patient if that is a reasonable rate. I am going to ask one of the most intelligent men in this body if I am correct, and I want to ask the gentleman from Newton (Mr. Anderson) to say whether I am correct or not. [A pause.] He does not want to admit it now, but he has heretofore.

Mr. SAWYER of Ware: I should like to ask the gentleman, Mr. President, through you, is it NOT true that those patients must be public charges, in need of public assistance, and cared for under the most advantageous conditions, under that section of the resolution?

Mr. GEORGE: I am not arguing the question of service. I say that this opens the whole question again, so that St. Luke's and St. Mark's hospitals and other sectarian hospitals can receive State aid and municipal aid if the Legislature so provides. So that every time a man is a candidate for public office the proposition will come up to him: "Are you in favor of appropriating public money to sectarian institutions?" and it will be more in politics than it has been in the past.

I think I am right. I believe that this opens the door; and, as one of the most brilliant lawyers in this State recently said, as it was quoted here some time ago, when this matter was up for discussion, it not only let down the bars but it invited them in.

This means the adoption of what is called the New York system. Let us see what they did over in New York last year, or in 1915, which is the latest report that I have been able to get. It is for the year ending September 30, 1915, and I am reading from the Forty-ninth annual report of the State Board of Charities of the State of New York. The cities and towns throughout the State, and the State itself, appropriated for private institutions, mostly sectarian in character, $10,030,745.82. That was $3,287,285 more than the Commonwealth of Massachusetts appropriated for the same purposes from 1860 down to and including 1916.

Now that is a system that they do not want in New York, but they

have got it, and they cannot get rid of it. They get in here and there, and finally they have established a system where in one year they appropriate for private institutions, mostly sectarian, more than $10,000,000.

Now I have here an interesting document. It is a "Report upon the cost to the City of New York of its contributions for Charitable Purposes," and it is presented by William A. Prendergast, Comptroller of the city of New York. He tells us that under the New York system the cost of private or sectarian charitable institutions in that city, for the ten years from 1904 to and including the year 1913, amounted to $41,445,142 and that the expenses in New York city alone increased from $2,968,437.30 in 1904 to $4,550,484.28 in 1913, an increase of $1,582,046.98, or approximately 53 per cent.

Mr. SULLIVAN of Lawrence: I should like to ask the gentleman if he is opposed to the provisions of section 3, which he is now discussing.

Mr. GEORGE: I am opposed to it in its present form, because it is unnecessary, and it simply puts in a bid for these institutions.

Mr. SULLIVAN: I should like to ask the gentleman if in document No. 340, relative to the inspection and support of charitable institutions, he does not make a proposition which is substantially the same, only that it gives greater latitude to the Commonwealth and to towns and cities than is given in section 3, which he is now discussing. I refer to the end of document No. 340.

Mr. GEORGE: I have taken the provisions of this resolution and divided them, and I reintroduced the same thing practically in the document referred to by the gentleman from Lawrence, so that when that matter comes up it can be amended; it can be changed in any way, be enlarged or limited. At any rate, it will be before the Convention for their consideration.

Mr. SULLIVAN: I should like to ask the gentleman if he wants that matter considered on its merits separately from this, why, in document No. 340, he combines it with other propositions which are bound to be objectionable to the great majority of this Convention?

Mr. GEORGE: I understand why I did it. We have in this Commonwealth something like nine hundred public institutions. They are doing a public work. Those institutions have been founded by the wealth left by the citizens of this State to establish certain hospitals and other institutions that do a great public work. Now, their property is not taxed, although their assets represent a valuation of $125,000,000. I think that they are spending something like $16,000,000 a year in various ways for the public welfare. Now, I am one of those who believe, Mr. President, that those institutions ought to be inspected by the Commonwealth of Massachusetts, and that was so over in New York until the Court of Appeals of New York upturned the system by rendering an adverse decision by a majority of one vote.

Now, this detailed statement of expenditures, covering the period from 1904 to 1913, is very interesting, because the proportion that is given out to the various institutions depends, I fancy, in large measure upon the number of votes there is behind it. I see that one institution gets $13,000 in ten years, another $75,000, another gets $13,225; I do not think they had many votes. Still another gets $85,000. I see that certain other institutions, one, for instance, receives in ten years $782,853.05, another receives $1,088,772.12, another receives $1,006,-

094.20, another $1,010,580.79, still another $1,560,545.71. These are paid for at regular rates by the week, the same as is proposed in this resolution. Then I find another institution received $2,855,856.85; still another received $3,267,461.51 and so on according to standing and influence.

Now, if you should adopt that system, what great opportunity there would be for the members of the Legislature from various sections of the Commonwealth to secure appropriations in behalf of their local institutions. How the political "rodents would skip from their hiding places" with such opportunities before them!

Now, New York does not want that system. They have got it. And because last year Mayor Mitchell, who is an honest man, thought that it was not proper to maintain the high death rate that there was in some of those institutions, and that there ought to be an investigation, and because he thought it was not proper to pay for patients who had been dead three months, they abused him, they called him a bigot, although he is a churchman, and they want to defeat him; and yet everybody now in New York except Tammany Hall wants him elected, simply because he is a man of courage. He believes in having things done right. And I want to tell you, Mr. President, that what we need here in this Convention to-day is a little courage to meet this proposition, to decide it right, and put this proposition before the people so they may have an opportunity to vote for what they want; not what the city of Boston wants them to have, not what a coterie of people in the city of Boston wants them to have. I say that they are entitled to it.

Therefore I have offered this resolution, in order to bring it before this Convention. And in view of what has been said round about the corridors, I want to say, Mr. President, that I have not asked anybody to vote for my resolution, and I care not whether they do or not. I know that I am going to. I am going to submit it to you, and I want you to exercise your own judgment, and I do not want you to be influenced by any of the reasons given to the effect that this is a complete remedy to take religion out of politics, because in my judgment it is putting religion back into politics a great deal worse than it has been for the last 25 years.

Mr. Webster of Waltham: I have not very much to add to this discussion; but I can say, with reference to what the member in the fourth division (Mr. George) added, at least this, — that he has spoken to a general principle, while most of these instances have been matters of special and particular interests. I think of an evening over in the Harvard Union when a certain professor was giving a reading from Dickens. It was a very cold night and the windows were all closed, the steam was all turned on, and the smoke also was much in evidence. And so in the midst of his reading he said: "It is getting very close in here. Won't some one please open a window?" Some kind-hearted gentleman stepped up on the platform and opened the window next to the speaker. He said: "Oh, no, don't open that one; that blows on me."

Now, gentlemen, I think that whenever you get a proposition of this kind, on a really large principle, you are bound to find the draft blows on the back of the other fellow's neck somewhere. You cannot come out of a history such as ours in the Commonwealth of Massachusetts,

dating back at least three hundred years, and not come with a heritage fraught with varied interests of one kind and another that are bound to be trodden upon just the minute that you endeavor to get a nineteenth century principle into action. You might just as well, gentlemen, stand up and face the issue that is put before us by the speaker in the first division (Mr. Powers), that more and more we tend to State supervision of all our educational enterprises.

I do not understand, sir, that the gentleman in the fourth division (Mr. George) has added anything to the debate by his quotations from the New York investigation. The measure under consideration is not for the purpose of protecting the public treasury, but for the purpose of protecting religion. If this thing is to turn into a discussion of religious matters and church interests I should ask you, sir, not to consider the Church of Rome, of which I know very little except superficially, but I should ask you to turn your attention to the Church of England, that I know all about from the ground up. While I have no desire to come under the domination of the Pope, I would far rather be under his domination than under the domination of the British Parliament or the Legislature of this Commonwealth. [Applause.]

We are trying, sir, to make this broad enough to cover the whole ground. For the committee, I can say that we are all regretful for some of these private academies. To my great personal regret, I find myself unable to support the very appealing proposition of our fellow-delegate who spoke this morning for the Deerfield Academy. I wish very much that we might make another exception; but we are trying, sir, to avoid these exceptions, because every exception is bound to be a weakness. We are loaded now in this amendment with all the exceptions that should be made. I do not feel that it is my job to pass a bouquet to the committee on Bill of Rights; I do not know that anybody will feel so; but, gentlemen, it ought to be appreciated that that committee nearly two months ago went into session in an atmosphere that was distinctly charged with danger, and, if we had not known it of ourselves, every newspaper in Massachusetts was throwing it at us.

Now, it is not my business to defend the committee or to extol its work, but I want to say this, Mr. President and gentlemen, that it is something to be said and something to be remembered of all the others of this Convention, that whatever is the issue of the vote in this Convention, whatever is the issue when the matter of ratification comes before the people, that there are at least fifteen men who have come out of this long debate, where sometimes we have sweat blood, with a profound respect, aye, sir, I may say we have come out of it with a distinct affection for each other. All the object that I have in making this speech is that no man should feel that in what seems to be, as in the case of the academies, a perfectly proper request for an exception, you have got fifteen pig-headed, bull-headed, obstinate fellows, who have sworn that whatever comes they are not going to allow anything to interfere with their program. Nothing of the sort, sir. It is because we have become convinced, as I regret to see that some others are not already convinced, that we have here a principle which will not divide the Commonwealth of Massachusetts, but which will unite us on a basis where all except the extreme people at either end of the line will be ready to walk down the middle of the

road in peace and good fellowship, and go about their business. That, sir, is what I suppose the people of this Commonwealth in general are all anxious to do.

Mr. Barnes of Weymouth: I feel some diffidence about entering into a discussion that has been participated in by men so much more familiar with its details and ramifications than I can be. But if, Mr. President, my membership, my service, upon the committee on Bill of Rights has permitted me to obtain information or to formulate opinions that may be of value or of assistance to my fellow-delegates in their consideration and determination of this question, it seems to me to be my duty to express those views to the members of this Convention, even though, perchance, I trespass somewhat upon their patience in doing so.

It seems to me desirable that we should consider just for a moment what we are trying here to accomplish. There has been much said about prohibiting appropriations for sectarian schools or sectarian institutions; and I desire particularly to call this to the attention of the Convention because it has a distinct application to the amendment suggested by the delegate from Deerfield (Mr. Boyden), for whom we all entertain so high a regard and respect. Do not let us, in discussing appropriations for sectarian institutions, or institutions under sectarian control, lose sight of the real principle that we are all endeavoring, I trust, to carry out. Why is it that we oppose, — and I think most of us do, — appropriations of public money to an institution under sectarian control? Why, it is, Mr. President, I apprehend, because that institution is teaching, inculcating, or promoting a doctrine that is not common to all the people of the Commonwealth and in which all the people do not believe.

Now, is it not equally true that an academy, a school or an institution, inculcating, teaching or promoting any other doctrine that perchance is not sectarian, but in which the public at large do not believe, should be deprived likewise of public support and public control? Do not misunderstand me, Mr. President, because I do not mean to have any one infer that these academies are teaching any doctrine inimical to the public interests. But the principle is equally clear in either case.

Suppose, for example, Mr. President, some academy or institution at the present time was teaching its students that this war in which the United States is engaged is an unrighteous war, and that we never ought to be in it. How would you and I feel about that institution receiving aid from public money, raised by public taxation? I do not mean, Mr. President, to intimate that there are such academies or institutions. I mean to point that out only as an illustration of the fact that there may be many other things, many other principles, inculcated in these institutions, that are not public and are not common to the whole citizenship of the State, and that are equally objectionable with that of the teaching of sectarian principles.

That, Mr. President, is the thing we are trying to accomplish here when we say that no money shall be appropriated or devoted to any institution unless it is under public control, unless that money is applied under the supervision and direction of public officials, who are accountable to public authorities, who are accountable to the Legislature elected by the people; so that those institutions shall teach and inculcate only those doctrines, only those principles, which are laid

down by public officers and public agents under the authority of the Legislature, representing all the people. That, Mr. President, I think is what we are trying to accomplish, and not simply to prohibit appropriations to institutions under sectarian control. It is because, Mr. President, I believe the amendment of the gentleman from Deerfield (Mr. Boyden) violates that fundamental principle, because even though it has a strong personal appeal, even though it has much merit that appeals strongly to our sympathies, yet it violates the very fundamental principle on which this resolution is founded, and which we are trying to accomplish here, — it is for that reason, Mr. President, it seems to me the amendment ought to be defeated. It long has been in this Commonwealth, and I suppose in every State, a fundamental principle that public moneys raised by taxation should be applied to none other than public purposes. That was well laid down some time ago by the Supreme Judicial Court of this State, when a distinguished and revered member of this Convention was upon the bench, who joined in that opinion, when a town down here in the southeastern part of the Commonwealth attempted to make an appropriation for a Grand Army Hall, for Grand Army purposes. A distinguished lawyer of that vicinity, Mr. Kingman, carried his case to the Supreme Judicial Court, on the ground that that was not an appropriation of public money for public purposes; that it was an appropriation of public money to a private purpose. And the Supreme Judicial Court said that he was correct in that contention, and that that appropriation could not be sustained. There is one paragraph in that opinion, Mr. President, that seems to me applicable to the present situation, in which they say:

> If the body of persons to be benefited is numerous, the greater is the influence that may probably be brought to bear to secure such an appropriation of public moneys.

In other words, the more exceptions we bring in, the greater the number of people benefited by those exceptions, the more hazard there is to the entire principle involved.

So, Mr. President, because I believe that this amendment violates the principle that we have established in this resolution, because if we adopt this amendment we shall soon find ourselves in the same position in which the Legislature has found itself, namely, that as successive proposals have come before it and it has adopted one because it had seeming merit, and then the next one because it apparently had as much if not more merit than the first, so that that has gone on and on until we find that from the original appropriation of perhaps $48,000 a year the Commonwealth is now spending nearly $1,000,000 a year for these private institutions; if, I say, Mr. President, we start upon the exceptions, it seems to me we soon shall find ourselves in exactly the position into which the Legislature has been led and the principle of this resolution will be entirely lost in the obscurity of the multiplicity of exceptions that will be attached to it.

Mr. President, for those reasons, because I believe it violates the principle of this resolution, because I believe it vitiates the very purpose of this proposed amendment, and because I fear that it imperils the hope of settlement of this whole question that we all so ardently desire, I trust that this amendment, as well as all other exceptions to this resolution, will be defeated. [Applause.]

Mr. ANDERSON of Newton: I listened with the greatest interest to the debate of last Friday morning and felt as it proceeded that we were losing the force of the broad stream of our agreement in the sands of a desert of minor differences. I think that we ought this morning, once more, perhaps, to go over the whole matter and to appraise the purpose and the value of the proposal of the committee on Bill of Rights.

I understand that it is the custom of this assemblage to yield for questions, although it is not at all the uniform custom of Congress, but I am going to ask that, because I am trying to present a balanced argument, I may not be interrupted for questions until the end; then I shall be very glad to answer any which may be asked of me.

I do not need to go over what I said the other day about this being a world-wide and age-long controversy in which we are engaged. I do not need to review the two hundred years of conflict in this State which finally resulted in 1833 in the eleventh amendment, which in a backhanded but effective way finally disestablished the State church in this Commonwealth. This was a great step in advance, but still in 1833 a great deal was left undone. For while it is intolerable to men who prize religious liberty to be taxed for the support of a State church, it is only one whit less intolerable for them to be taxed against their will for the support of the schools and institutions of a church.

In 1853 a part of this subject which was left unfinished in 1833 was taken up, *i.e.*, the matter relating to the public schools, and the extremely awkward eighteenth amendment to the Constitution, which never had passed the scrutiny of a committee as far as I can find out, was finally passed. As I understand it, that amendment says effectually, though not plainly, that public money is to go to public schools only, and public schools mean the common schools of the Commonwealth. To that statement, — and the amendment should have ended there, — there was added the following phrase:

> and such money shall never be appropriated to any religious sect for the maintenance, exclusively, of its own school.

That was a very dangerous addition. It is very difficult to find out what it does mean, but the English of it is simply this: That $200,000 might be appropriated to the Methodist denomination, we will say, and that if only $195,000 of it was used for its own schools and $5,000 for something else it would be all right. And I apprehend that the reason that the Supreme Judicial Court in its 1913 opinion divided four to three on the subject whether appropriations could be made to a religious denomination or religious sect was this very sentence, and three of the members of the Court, relying probably on this sentence, declared that under certain circumstances appropriations might still be made to a religious sect. This dangerous situation is cured in the report of the committee on Bill of Rights by saying that no appropriation shall ever be made to a religious denomination or religious society.

The Convention of 1853, however, lacked both in courage and in vision, but especially in vision. They did not see how important it was to clear up this whole question, and they dealt only with public

common schools, leaving higher educational and charitable institutions entirely out of the question. And on that account since 1853 there have been various movements in this State in this sphere. Some of these movements have been on a lower and narrower plane and some of them have been on a higher and broader plane, but all have insisted that the doctrine of the separation of church and State should apply to all appropriations to sectarian institutions of whatever kind.

Now I want to say to some men in this Convention who have been so busy with other affairs, and rightly, that they have not known what has been going on in this matter in this State, that this is a very popular issue. Why, before our committee on Bill of Rights there appeared the Methodist bishop, who told us in no uncertain terms that all of his people, practically without exception, favored the prohibition of sectarian appropriations. A representative of the Congregational denomination appeared and read us a resolution which was passed by their State assembly, — I do not know just what the name of it is, — with only a few dissenting votes, in which it stood absolutely for this principle of the prohibition of sectarian appropriation. The representative of the Unitarians came in and said practically the same thing. I remember very well that two years ago in the Baptist State Convention they passed a resolution to the same effect unanimously and with cheers. I have been attending that Convention for seventeen years and I never heard any resolution in that Convention cheered before or since; but that one was greeted with cheers.

Now I have nothing from the Episcopal church, but in going about the State and talking about this matter I never have found an Episcopal clergyman who was not in favor of the prohibition of sectarian appropriations. And I never have found any Protestant clergyman nor any Jew who has not been in favor of that prohibition. And almost all of those who claim to have no religion or who are agnostics, if you talk with them on the subject, will say it is perfectly right to prohibit sectarian appropriations. I believe that five-sixths of the people of this State believe in the principle of the prohibition of sectarian appropriations.

We have a society called the Minute-Men, not a secret society; it has no dues or salaries; it is distinctly not an A. P. A. society, but an association in which the broadest and most liberal men have gathered together. It was founded by Mr. Batcheller and since then a large body of the most distinguished men in this State have entered it. It has only one object, — not, let me tell you, not necessarily, narrowly, to put through one particular amendment called the anti-sectarian amendment, but merely to put this principle of the prohibition of sectarian appropriations in some way into the Constitution of Massachusetts. Now one hundred thousand voters of this State have signed the cards of this association and at one time in the recent history of the State sixty thousand votes were cast for this principle in one of the Republican primaries and one hundred and seven votes were cast for this principle, — and I think we could say a good many more votes than that if we take merely the principle into consideration, — in the House of Representatives. It is a large, popular movement.

Now I did not believe that fully until after my election to this Con-

stitutional Convention. Please pardon a personal reference but I want to tell you how I learned a good deal. I never had been in politics before and so, of course, I learned a good deal anyway in a good many different directions. But I made up my mind that I would test the popularity of this movement. I had been told that there was a great popular demand for this principle and I said: "I am going to test it." I was an utterly unknown man politically, hardly known beyond my own ward in Newton, and I knew perfectly well that my personality would not command five hundred votes in the district. But I said: "We will test the principle now and we will put it forward from beginning to end." And so from the very first night of the campaign to the last I attached my name to the anti-sectarian amendment prohibiting sectarian appropriations. I spoke of it every time I spoke at all, I advertised it in the newspapers, I sent circulars heralding it all about the district, and this was the issue which finally gave me in the district 9,620 votes. Now that shows how strong the issue is when it is presented in a calm and fair manner. I advocated it as the way to a solid peace in this State, and that is the thing which I came to this Convention to help on if I could, — a solid peace in this State.

Any one who has been here in the State House for the last two months knows very well that there is more popular interest in this matter than in any other. Our hearings were crowded; we had to go to one of the very largest rooms in this building in order to accommodate the people who came day after day to hear.

Now the reason that this is a popular issue, the reason there is a great popular movement for it, is easy to understand. In the first place, it involves the religious liberty of the individual. It is a part of religious liberty that the State can force no act in the sphere of religion, and that on the ground that religion is a private matter between a man and God; that it has its seat in the inner sanctuary of the personality, and that to force a man on the subject of religion, to force him to any act in that sphere, is to force him in those things which he holds deepest and most sacred, is to violate his personality in the grossest and crudest way. And if that is true, it applies to appropriations for sectarian purposes, for the State under this principle has no right to force a Catholic to pay his good money in taxation for the support of Protestant institutions; the State has no right to force the Protestant to pay his good money for the support of Catholic institutions; the State has no right to force the Jew or the agnostic to pay his good money for the institutions of any religion in which he does not believe. I do not know, gentlemen of the Convention, how much you prize your liberties. I lived for one year in Germany and the most of that time in the city of Berlin, and ever since I lived there I have prized my liberty. [Applause.] And I tell you that eternal vigilance is the price of liberty.

In the second place, the reason for the popularity of this issue is that the prohibition of sectarian appropriations is just as good for the church as it is for the State. We are not opposed to religion because we say that the State shall not give appropriations to religious bodies or institutions. We are helping religion by that proposition. It has been the history from the very beginning that it has been good both for the church and for the State that they should be separate;

not separate as though the State hated the church or the church was opposed to the State, but in a perfectly friendly manner, with an understanding of the two different spheres in which the affairs of the State and the affairs of the church move.

Two illustrations of that: When Christianity had its first great victory in the Roman Empire and the Emperor Constantine became at least favorable to Christianity, in that very hour of their greatest victory, the Christians committed their greatest mistake. For the State and the church then for the first time were united and religious questions became the great political questions of the new Christian Roman Empire, so that all of the political troubles for a hundred years gathered around the question whether a man was an Arian or not. And it was just as bad for the church, for one of the first things that happened was that the Emperor went into the church council and presided and political influence began to do its work of degradation and deterioration in the church.

Here is another illustration of it: In France, up to about thirteen or fourteen years ago, the French Catholic church had been feeding out of the public treasury for centuries, with the exception of a brief period, and the result was, as a distinguished Catholic member of this Convention said the other day in my presence, that it became almost as fragile as a house of cards. When the *Concordat* was denounced in a way that I myself could not approve, but when at last the separation between church and State occurred, the members of the Roman Catholic church in France, a great many of them at least, thought that the church was done for, that without public money it could not subsist. What has been the real result? The real result has been that in these fourteen years the Roman Catholic church in France has become stronger than it ever was before. It has increased in faith, increased in courage, increased in independence, increased in popular favor as never before in all the history of the country. Never was such a distinct good done to the Roman Catholic church in France as when separation of church and State was effected, although there was some injustice in the way in which it was done. Consequently I wish to say that I believe that we are not doing anything against religion, but that we are doing a great thing for religion in taking the position that we do not believe in appropriations for sectarian purposes.

The next reason why ours is a popular issue is this: It takes the last irritating debatable question out of the politics of this State. This has been an irritating debatable question for many, many years, and has been debated more or less during all this time. It has caused a friction in the State which never ought to have existed. It has caused division in the State when there should have been none. It has filled different parties with suspicion when there should not have been any suspicion. And one of the most difficult things that we have to overcome in this Convention is the mutual suspicion which this one thing has bred in this State. If the men who come from communities where it has not been much discussed do not believe that this is a question of immense importance I will say to them that they should ponder the Haverhill riot, in which this smouldering fire burst into flame for a few days. We do not wish to discuss that riot now,

but we desire to do something here to-day that will make it absolutely impossible that any such things shall ever occur in this State again.

When you go into the railroad train, you sometimes get a cinder in your eye and it feels extremely uncomfortable. So you put it up here, and it is just as uncomfortable here as it was there. So you put it over in the right-hand corner of your eye and you begin to weep and feel that you must somehow get it out. You put it down here and it is just exactly as irritating. What is the matter? The matter is that a cinder does not belong in the eye; take it out; take it out! And that is just what we wish to do by our proposal, — to take this irritating, debatable question out of politics forever. In accordance with the great American scheme of the separation of church and State, it never ought to have been in politics. I hope that this is the last Convention in this State in which the matter will ever be debated.

And lastly, it prevents an unseemly scramble for public spoils. Suppose we knew nothing of this teaching in this State, suppose we were back in the old days when all things were free and open, why, we would have an assault on the Legislature for spoils by the different denominations, and you know just what that would mean. All would be on the same level to all appearances, but nevertheless there would be contentious jealousies, each trying to outdo the other in the amount that it would get out of the public treasury, and no one of them would have any real ground for its demand.

Why, then, does not our report contain merely the simple issue of the prohibition of sectarian appropriations? The reason is this: Some of our Catholic friends, who believe in religious liberty and the separation of church and State even to the point of taxation and appropriations, looking at the old anti-sectarian amendment, thought that its defining words "under sectarian or ecclesiastical control" did not cover the whole case. They felt that they did exclude all Catholic schools and institutions from public aid, but that they did not so exclude all Protestant institutions and schools, for they pointed out that some schools and institutions, which seemed to them virtually but not formally Protestant, just escaped coming within the operation of the clause "under sectarian or ecclesiastical control," and declared that it was impossible so to define them as to bring these schools and institutions under its prohibitory force. They therefore felt that the old anti-sectarian amendment was unfair to them and in a manner discriminated against them. I did not understand this when I began my contest, and did not fully appreciate it until very recently. I want you all to know the truth that those who framed the older amendment supposed it to be perfectly fair and as general in its application as in its terms, and that in the campaign for this Convention we had no other idea. Indeed I still believe that the old amendment is fair, that the point that it does not cover all possible Protestant institutions, while technically correct perhaps, is merely technical, and that the old amendment would work out no injustice to anyone in practice.

Still the fact remained that our Catholic friends did hold the view that the old amendment was unfair, and some of them were deeply suspicious that it was intended to be unfair. Some of them therefore, under the leadership of my friend from the fifth ward (Mr. Lomasney) hit upon the really brilliant idea that all Catholic and non-Catholic

sectarian schools and institutions would be covered by the term *private*, and that a prohibition of appropriations to all private institutions would solve the problem beyond all question.

Now when I came to understand this a short time ago, what was I to do? Was it not the part of fairness and of wisdom to allow them to have their way in such a case and thus forever allay their suspicion that we intended to take any slightest advantage of them? Was it not better to coöperate with men who agreed with us on our principle, were willing to give us all we asked and who differed with us only in a matter of definition, rather than to antagonize them by insisting on what seemed unfair and obnoxious to them? I am free to say that I had other compelling reasons for signing the report of the committee and so making it unanimous, but the desire to act in such a way as to bring in an era of harmony and mutual confidence was one of the strongest motives I had in that act.

And I am free now to say what I never have said before, that the amendment reported unanimously by the committee on Bill of Rights is under the circumstances the very best solution of this whole controversy, and it is the best because it is a true compromise, in which no one gains a victory over the other, but each gains a victory over himself; in which all parties make real concession and all gain real advantages, and yet without the slightest sacrifice of principle. And it should be pointed out that a compromise of such fairness, entered into in a spirit of mutual understanding and good will, is liable to stay in the Constitution, if once inserted in it by the vote of the people. I am heart and soul in favor of the proposal of the committee on Bill of Rights. [Applause.] I believe that it gives to those who wish to put the principle of the prohibition of sectarian appropriations into the Constitution all that they ever asked. For weeks I have been looking for that supposed "joker" in this measure. I have not found it. At first there were one or two things I thought were "jokers." I asked that they might be amended and I found that they were mere inadvertencies, because my opponents, — now my friends, — were perfectly willing to amend them; no opposition at all.

Now I believe in the sincerity, Mr. President, of every one of my colleagues on this committee. I am sure of that sincerity in my own mind. I repudiate the idea which was given us by the gentleman from Haverhill (Mr. George) that this is a political scheme. [Applause.] It is nothing of the sort. Presented to you as it is, it is a monument of self-sacrifice, of the broadest good will and patriotism that has yet been presented to this Convention.

And now after I have said that, I am going to say something else. Let me tell you in all frankness that if this Convention or the people reject this best solution of this question, this unanimous report of our committee, on account of the hostility of the friends of the private institutions, it may be necessary to urge upon the people the next best thing, the old anti-sectarian amendment. For there are tens of thousands of citizens of all parties who will not rest until they have put the good old American doctrine of the separation of church and State in all its length and breadth into the Constitution of Massachusetts. The method of doing this recommended unanimously by the committee on Bill of Rights is, in my opinion, the best. Let us hope that both the Convention and the people will have the wisdom and the vision so

to regard it, and that no second best ever will form the basis of another contest.

But some one may ask: Do you not then sacrifice the non-sectarian private institution for the sake of settling the religious controversy? Indeed, in an earlier stage of my progress toward a larger knowledge of this subject, in the days of my comparative ignorance, I asked the same question. The answer is "Yes" and "No." It is partly true, but it is not the whole truth, and only the whole truth should influence our final decision. The fact is that we have here a new policy for the State, which, on the whole, is a good one in and of itself, entirely apart from any relation to our compromise. Allow me to show you that this is true.

When I came before the committee on Bill of Rights at the first hearing I was asked the question if, apart from the sectarian features of this measure, I believed that it was good policy to cut off the private institutions from State aid; and I could not give a positive answer to that question after all, because I was not decided in my own mind. But I have been learning ever since that time and I am coming more and more to the opinion that, apart from our compromise entirely, it is good policy for this State to give no appropriations of public money to private institutions.

Now I should like to show you that. In the first place, no school or institution has a right to an appropriation. Let us put that right down. No school or institution has a right to an appropriation. Of course you can say that they are worthy institutions. They are worthy institutions. That does not give them a right to a State appropriation. You can say that they are doing good, doing a fine work, doing a work of mercy or of charity, or of education, or of something else which is of inestimable worth to the community; but that does not entitle them at all to an appropriation from the public treasury. Why, I could make a pretty good argument here to prove that man for man, the graduates of the Newton Theological Institution were doing as much good to the Commonwealth of Massachusetts as the graduates of the textile schools. Because that Institution is a good one, a worthy one, doing a good work, a work which seems to a great many people indispensable to the highest interests of the State, nevertheless that is no reason at all why it should have an appropriation.

And I want to say one thing more. I heard in this hall on Friday that, because the State had once given an appropriation to a school, that might constitute a certain claim upon the State, as though because the State for ten years or twenty years had given such an appropriation, it was in some way under obligation and bound to do it for all the future. There is nothing at all in that either. This is a State policy, a new State policy, which is proposed here, and it is always the question with the State, a question which is to be settled by the State itself, as to whether or not it is a good thing to help this particular institution in the public interest.

In the second place, — my colleague on the committee in the fourth division (Mr. Barnes) has taken this matter up, so I pass it over a good deal more cursorily than I would otherwise, — down at the bottom of this policy there is a legal principle which he mentioned, and that is, no public money for private uses. That is inherent in the

very idea of taxation, for taxation is the taking by the State of the money of the individual for the public good, and consequently the State has no right to use it for private good. The case to which my friend referred, that of *Kingman* v. *Brockton,* I have here, 153 Mass. 255. There Mr. Kingman, standing on his rights as a citizen and on this principle of which I have spoken, refused to pay his taxes levied for the support of a Grand Army hall and I believe was threatened with arrest or perhaps was arrested. He brought the matter up to the Supreme Judicial Court and the court said that he was right about it, that the city of Brockton had no right to use public money for the private uses of the G. A. R.; that they might just as well have appropriated money for the Masonic Home or Odd Fellows' Hall in Brockton. Now you see, however, that that does not settle the case, because the plea is that these institutions, many of them, are not altogether private institutions. Some of them are partly private and partly public, some of them have so large an interest in public service that we cannot call them exactly private institutions. There is a very shadowy line here, a "twilight zone" between public institutions and private institutions, — between appropriations of money for the good of the State and appropriations for simply private enterprises. And if the conditions at any time in the history of the State are such that the State makes up its mind that it is good policy for it to cut off all private and semi-private institutions from its treasury, it has a perfect right so to do.

In the next place, I want to show you the growing abuse of the policy of aid to private institutions. My friend from Milton (Mr. Bryant) on Friday morning said that it had been the policy of the State from the very beginning, and I suppose that that is a sufficient argument for some gentlemen in this Convention. But it is not a sufficient argument for me, because I believe that sometimes it comes to the point where old privileges are abused to such an extent that the only thing to do is to cut the whole thing off, to destroy the animal by cutting off its head.

Now we have the facts that for the last six years the State itself has given $1,000,000 a year to private institutions and I suppose the cities and towns have given another million to them. That is simply my guess on the matter. And when you look at other States we see what this policy is leading to. All we have to do is to point to the figures which were given us just now by the gentleman from Haverhill (Mr. George) with reference to the State of New York. Ten millions of dollars in one year by the cities and towns of the State of New York, apart from anything that was given by the Legislature, I understand; and he admitted in his statement that some fair fraction of that amount was given to non-sectarian private institutions as well as to sectarian institutions. And I was told, — I have not the figures for this, — that in some towns and cities of New York State Old Ladies' Homes were beginning to get money from the public treasury, and Elks' Homes and Odd Fellows' Homes and this, that, and the other, until almost everybody now is filled with the idea that if he can exert enough influence in the State of New York he can get his hands into the public treasury, too. It is a dreadful scandal, — this widespread desire to be fed and helped by the State.

Take the Commonwealth of Pennsylvania. The Commonwealth of

Pennsylvania has been doing the same thing, so that it has reached pretty nearly $1,500,000 a year by the Legislature only, not saying anything about what the cities of Philadelphia and Pittsburgh and the other great cities of the State have done. I call your attention to some of the things that were helped by the Commonwealth of Pennsylvania:

The Union Home for Old Ladies, Philadelphia.
Home for Colored Children, Allegheny.
Midnight Mission, Philadelphia.
Home for the Friendless, Harrisburg.
Home for Aged and Infirm Women, Easton.
Messiah Home Orphanage, Harrisburg.
Florence Crittenton Mission, Williamsport.

And so we go on —

Beulah Home, Reading.
German Baptist Home for the Aged, Philadelphia.

Some of those, of course, are sectarian and some are non-sectarian, too, private institutions which are being helped by the Commonwealth of Pennsylvania.

Now I tell you that this has become a serious strain on the Legislature of Massachusetts and on the city councils and the selectmen of this State. These appropriations are not made after a wide survey of the needs of the State, picking out this institution or that as a strategic point where there is need, and giving a State appropriation to help at that point of need. Why, that is so idealistic a picture it never has occurred to a good many men in this Convention that possibly it might be the way to do it. Rather it is done just as the gentleman from Haverhill said. Men come into the Legislature and they hope that their political fortunes will be furthered if they can get an appropriation for some institution in their city or in their town. And sometimes the institution has not even asked for it, but representatives come in and ask for these appropriations just with the hope of being elected to some office or other in the future. And political pressure is brought to bear for this institution and that institution and the other institution, and the Legislature votes away the people's money without any real consideration, in a large way, of the needs of the State or as to why this particular institution rather than others like it should receive the appropriation.

Now it is not good for the private institutions to get this State money. I believe it is no better for the private institutions to get the State money than it is for the sectarian institutions to get it. I believe that the private institutions which stand on their own feet, which proudly have refused ever to ask one cent of the Legislature or of the city council, which have determined to rely on the benevolence of the people who support them, — I believe that those institutions grow stronger and better and larger than the other institutions do. For just as soon as a private institution begins to feed at the public crib, just so soon its aims must become more or less political and just so soon politics begins to enter into its management and its affairs. And so the springs of benevolence are dried up and private philanthropy is discouraged.

I call your attention to what the Public Charities Association of

Pennsylvania in 1913 said about affairs in that State. This is from their first annual report on this very subject:

> For years a persistent protest had been heard from medical conventions, women's club meetings and social workers' conferences that the method of making charitable appropriations in Pennsylvania was unscientific and unjust and resulted in the neglect of the State's wards. From various and increasing sources the system of State appropriations to private charities had been discredited on five specific counts: That it crippled our public institutions and prevented the fulfilment of our public obligations; that it encouraged the development of unnecessary private charities; that it discouraged private philanthropy; that it confused public responsibility with private benevolence and hindered the development of a uniform and clear-cut system of charities; that it carried our charities into politics and resulted in gross political abuses.
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> This widespread but unorganized sentiment reached its climax at the fourth Pennsylvania Conference of Charities and Correction at Wilkesbarre in October, 1912. A Committee on Standards and Classification in Granting State Aid reported to the conference on the weaknesses and incongruities of the present system of making appropriations, and declared that "appropriations from the State treasury should not be made to charities under private management until the reasonable needs of the State have been fully met and an adequate system of State institutions fully developed."

And after going on to elaborate that, the writer of this article ends:

> If this policy is adopted, there will remain but a short step to direct State control and administration, which would perhaps be the most logical and satisfactory evolution from the subsidy system.[1]

In the next place, it cripples our public institutions. Here we have perhaps two millions of money in the Commonwealth of Massachusetts, — perhaps that is a little high, a million and a half, — given to these private institutions when it ought to be given to our public institutions, to our public charities. A friend of mine was sent some time ago to one of the public institutions in this State. I am not making any criticism of that public institution, but I want to say that compared with the private institution which she left, it is a pretty bare and hard affair. I do not say that the officers of that institution do not do the best they can with the money, but they ought to have a great deal more money there to do their work. And I believe that if the State cannot get that money anywhere else, — and in these hard war times I do not know that it can get the money anywhere else, — it ought to take the money now given in appropriations to these private institutions and put it into the public institutions so that they might be something like what they ought to be. I do not believe that we have a right to give away money before we supply our own children with proper food. And I do believe, in the last place, that there is something in the argument that in the end the State ought to have something of ownership to show for its money. When the State puts, year after year and year after year, $10,000 and $50,000 and $100,000 into an institution, it seems to me that at last it ought to own that institution, ought to have some real property there, as well as the benefits that come from the institution in an indirect way to the public.

Mr. President, I have reached a certain turning point in my speech and it is nearly one o'clock, time, perhaps, for the Convention to adjourn. I move that the Convention adjourn.

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[1] Neva R. Deardorff, Assistant Director, Philadelphia Bureau of Municipal Research, in "The Survey," February 24, 1917.

Continuing after the recess, Mr. Anderson said:

I am going to tax the patience of the Convention only a few moments more. I had intended to take up all of the objections that I had heard to the prohibition of appropriations for private institutions, but I shall mention only one or two.

It is said that there is no public demand for this prohibition, and that is more or less true, but it is the kind of change of policy for which it is unlikely there would be a public demand. Changes of policy come from two directions: First, from the public; and, second, in other cases, from trained legislators. And it seems to me that this is the sort of thing which naturally would not come from the public until the abuse of the privilege became almost unendurable. As a matter of fact, many of the leading legislators tell us that the privileges are now abused to the extent that we ought to be very careful about this matter at least, if not to cure it at this time. One hundred and fifteen members of the Massachusetts Legislature voted in favor of this principle in 1915.

But if there is little public demand for the prohibition of appropriations to private institutions, there is a demand for the amendment offered by our Bill of Rights committee. I must say that when I go out and talk with the people I am unmoved by the opposition which we find in this Convention, and I have it reported to me by other delegates that the people are practically unanimous for this amendment as far as they understand it. They want to see this question taken out of politics. They want to see it settled according to the American doctrine, and settled right, and I am quite sure that you will find large communities in this State that will vote almost unanimously for it. The more I hear from the people the more certain I am that we are on the right track. You know I felt for a good while that it was very doubtful whether with the handicap of the private institutions we could possibly carry this amendment at the polls. But now, although we have some squalls before leaving port and although we have an unchartered channel before us and no one can tell exactly what is going to happen, I have the largest faith that with this good crew which we have aboard we are going to carry the ship through to the desired haven.

The next matter to which I wish to call attention is the fact that this is a new policy and consequently demands many readjustments and works some hardships. There can be no doubt about it. So it is with every change of policy in a settled community. When the Commonwealth of Massachusetts chartered the first railroad it certainly caused a great change and readjustment in the whole system of transportation, and a good deal of hardship was worked to the old stage lines when the locomotives began to draw the trains over the railroads. And so it is perfectly inevitable that with a new policy we must have something of that sort. But I call your attention to the fact that this amendment of ours is right in line with progress. In 1853 the State reached the point of saying: "Public money to public schools only." Now we only take the next step and say: "Public money to public institutions only." And this step already has been taken by six other States of the Union.

It seems to me that all I have to do to carry my point with the Convention is to prove to it by even the slightest margin, fifty-one to

forty-nine or something of that sort, that this change of policy is desirable. And if that is so, then the very great value of our amendment in taking the whole sectarian controversy out of politics will more than outweigh any possible objections which can rise.

I wish to speak a little about the pending amendments in general. This compromise which we put before you, — and all matters of this sort which really settle anything are compromises, — is of course of a very delicate nature. I suppose it is hardly an exaggeration to say that there are lines in this amendment which contain the words of five or six different members of the committee. Why, there is not one member of the committee but probably could write a better amendment than this. But this is the only amendment on which we all can agree. It is the only production to which we all can give our consent. And consequently it has the most delicate balance, and if you put in this amendment and that amendment and the other amendment you will be sure to imperil it and perhaps to disrupt the harmony which all of us are so happy to have attained.

Mr. HAINES of Medford: I should like to ask the gentleman if this amendment passes and then goes to the people and is accepted by the people as a constitutional amendment, is it then under the initiative and referendum as is put forth in the measure by the majority of the committee before us? Can it be repealed and at the same time put on the ballot by any parties having the required number of votes?

Mr. ANDERSON: In reply to the gentleman's question I will say that of course if any one, any party, can get fifty thousand signatures they can put any proposition, I suppose, on the ballot by the initiative and referendum. I think that is a plain statement in reference to the matter, but I do want to make this point, — that an amendment like ours, put in as a result of a compromise of this sort, with the feeling of good will, with the idea that everybody is treated right, will stay in the Constitution a lot longer under the initiative and referendum than any other kind of amendment.

Mr. HAINES: I again should like to ask the gentleman how we settle this question in this Convention if the next year the people, under the initiative and referendum having the right to repeal our acts as a Constitutional Convention, get a certain number of signatures and then take it before the people in a controversy?

Mr. ANDERSON: Well, I should say in reference to that: If the initiative and referendum is adopted we have all got to meet it, that is all, and what is sauce for the goose is sauce for the gander.

Mr. HAINES: I should like to ask the gentleman if he thinks the people of this Commonwealth want this measure or want any compromise, or whether they want a straight measure based upon the feeling that they have as people as to what should be the law on the sectarian issue, regardless of any appropriation for any educational purpose or for any private purpose whatever where there is any religion brought into the matter.

Mr. ANDERSON: I think that what the people of this State want is an amendment that will settle the question and settle it the longest and settle it the best; and I think very soon, if they look into the question and if they have it placed before them rightly, they will see that this is the very best solution of the matter.

Mr. HAINES: It seems to me that the people of this Commonwealth

will have, — under the initiative and referendum which gives us the right to appeal any constitutional amendment adopted by this Convention, — the right then to repeal our act and will voice their own feeling and will bring this measure before us next year. It seems to me that our first duty here is to pass or fail to pass the initiative and referendum. If we pass that law we have accomplished the purpose of giving the people's voice power, and when we do that we have settled this question forever. If we settle this by our three hundred or more members here we simply have thrown it open to the same controversy that we always have had in the past, and it seems to me, Mr. President, that we should settle that question first and this question afterwards.

Mr. ANDERSON: I simply want to say that knowing as I do the situation with reference to this sectarian controversy, no sectarian amendment will be put forward by fifty thousand voters next year if the initiative and referendum is brought before the people. The fact is that we have just before us a new era in this State. If we can do the reconciling act of passing this amendment at this time in this Convention we shall bring in an age of good feeling in the whole Commonwealth, I believe, which will be very much like the state of good feeling which we have here now in this Convention. For the last three or four weeks we have had the first fruits and the foretaste of a new feeling in this State and I myself rejoice in it.

I shall now speak a little about the amendments which are before us at this time, and first about the academy amendment. I think that there is considerable merit in that amendment. There is some hardship that must be suffered by the towns and the academies, but I believe that there are various means of adjustment and that patience and largeness of view and some self-sacrifice and some genius in the Legislature will be able to carry that matter through. It seems to me that that amendment is the most dangerous to our compromise, for with my friend from Weymouth (Mr. Barnes), who spoke immediately before me, I believe that it attacks the very ground on which the compromise is made.

I wish also to answer my friend from Haverhill (Mr. George) as I said I should in reference to the hospitals. I believe that the third section of the proposal is a perfectly fair section. I do not believe it opens up the matter wide. It simply says that the cities and towns may pay the hospitals as any other of their patrons do for services actually rendered. Simply to pay their ordinary and reasonable charges is not aiding the hospitals in any way, shape or manner.

I wish to say a word about the amendments which I proposed as the representative of the committee, the committee amendments that I proposed with reference to the matter of phraseology —

Mr. GEORGE: I dislike very much to interrupt the gentleman's most interesting address, but he is touching upon the questions that I asked. I am not asking a question whether or no it is a fair proposition. What the question was is this: Is it not possible for the Commonwealth or any political division thereof to appropriate money to the New England Baptist Hospital for a hundred patients at so much per week, say ten dollars, if that is the prevailing rate? I simply ask if that is not possible; and then if it is possible, cannot that same thing

be done with three hundred other institutions in the Commonwealth, precisely as is now done in New York? That is what I wanted to ask.

Mr. ANDERSON: Under the third section the town of Brookline could pay the New England Baptist Hospital for care and support actually rendered or furnished to any number of patients, and so could any other hospital be served in any town or city of this State.

Mr. GEORGE: I should like to ask through you, Mr. President, if the Commonwealth of Massachusetts or the Legislature of Massachusetts cannot make a similar appropriation to that institution or any other institution for like service?

Mr. ANDERSON: The Commonwealth of Massachusetts can pay, if it is charged by any hospital or institution for the deaf, dumb or blind, the ordinary and reasonable compensation for service which is actually rendered and furnished under those circumstances.

Now I go on with my perfecting amendments which are committee amendments. The first amendment which I proposed was that after the word "learning", in line 22, — will the members of the Convention please take up the report of the committee on Form and Phraseology, pages 5 and 6, looking over to page 6, — we amend by inserting in line 22, after the words "aiding any school or institution of learning", the words "whether under public control or otherwise." The passage reads:

and no grant, appropriation or use of public money or property or loan of public credit shall be made or authorized by the Commonwealth or any political division thereof for the purpose of founding, maintaining or aiding any school or institution of learning wherein any denominational doctrine —

that is, any distinctive doctrine of any religious body or anti-religious sect —

is inculcated, —

that is, is taught or propagated —

or any other school, college,

and so on.

Now, after the word "learning", in line 22, we insert the words "whether under public control or otherwise" Those words were in the original resolution and were left out by the committee on Form and Phraseology because they thought they were surplusage and that it was not necessary to put them in. The committee on Bill of Rights do not know whether they are surplusage or not and are a little doubtful, and think it is best to retain them on the ground that it makes the matter perfectly plain.

In line 24 we wish to insert, as we had it in our original proposition, after the word "school," the words "or any", so that it shall read: "or any other school, or any college, infirmary, hospital, institution," etc. This is a matter merely of English. The word "other" is correlative. It refers to some one thing of which it is the other, — the one, the other. Now when we say "or any other school," we mean that one kind of school which has not yet been mentioned, and that is the private, non-sectarian school.

Now you see that there is in line 22 the word "school," and in line 23 we have "or any other school,". The committee on Form and Phraseology would say "or any other college", and looking at line 22

you would see "institution of learning" corresponding to it. But still "college" narrows "institution of learning" considerably. "Institution of learning" may mean academy, or theological seminary or anything else of the kind, but "college" narrows it, and so we put in "or any college". Now if you go on with this sentence as the committee on Form and Phraseology have it and say "or any other infirmary," you look in vain to the line preceding for any infirmary. "Any other hospital"; you still look in vain for a hospital above. "Any other institution"; you still look in vain for a correlative to that. And consequently we think it is good English for us to put in the words "or any" before "college".

The last perfecting amendment would insert the words in line 25 "publicly owned and", so as to read "which is not publicly owned and under the exclusive control, order and superintendence of public officers or agents", etc. It was made plain to us that without those words we might possibly let in all the private institutions in simply another way, that all the private institutions might come to the Legislature and ask that their trustees might be made public officers and agents, and consequently that they would get their appropriations simply by coming in at another door. Therefore the committee thought that it was best to say just exactly what they meant, "which is not publicly owned and under the exclusive control," etc.

Also I want to say one word about the phraseology amendment, — that is, the one making ours amendment 45 and leaving amendment 18 as it stands. Amendment 18 as it stands, it seems to me, is dangerous. The last clause of it makes it dangerous. I do not know why we should leave that sentence uncorrected as we correct it in two places in our amendment.

In the last place I want to offer, Mr. President, a unanimous committee amendment. I move to amend by adding Section 5:

> This amendment shall not take effect until the October first next succeeding its ratification and adoption by the people.

I offer this amendment, Mr. President, in order that the readjustment which must necessarily follow the adoption and ratification of our amendment by the people may be effected as easily as possible; that time may be had for making it.

Mr. Blackmur of Quincy: Mr. President, I desire to move the amendment to the resolution contained in the Orders of the Day, and printed on page 2 of the Orders of the Day. This amendment, as it will appear, provides for striking out, in line 24, the words "infirmary, hospital, institution, or"; striking out, in line 25, the word "charitable"; and striking out, in lines 29 and 30, the words "the maintenance and support of the Soldiers' Home in Massachusetts and for."

No change has been made in the first part of section 2 as amended. The purpose of this amendment is simply to eliminate charitable organizations, such as hospitals and infirmaries. The striking out or the elimination of that reference to maintenance or support of the Soldiers' Home in Massachusetts is made because the exemption is no longer necessary if the words infirmaries and hospitals and charitable institutions are eliminated. And so in section 3 there would be no occasion for the exemptions there provided, "hospitals, infirmaries,

or", and they are stricken out, because they would not be prohibited in section 2.

This amendment is in no way antagonistic to the proposed amendment which forbids appropriations for sectarian institutions. It is a simple amendment. It is directed specifically against the so-called no-aid-to-private-institutions amendment.

Now, gentlemen, I for one have had some difficulty in following the chameleon like changes in my friend from Newton (Mr. Anderson), who says that this amendment as it is now drawn is a particularly fine amendment, and that the purpose at which it aims, namely, giving no aid or assistance whatever to any private or semi-private institutions in cities or towns, is a most desirable one to attain, and he has given us what seemed to be several very convincing arguments to that effect. I have received, however, from one of my constituents in the city of Quincy a letter and a resolution which I have been asked to submit to this Convention. The resolution is as follows:

To the Constitutional Convention of the Commonwealth of Massachusetts.

Be it resolved, that we, the First Methodist Episcopal Church of Wollaston, Mass., hereby indorse the constitutional amendment to prohibit sectarian appropriations, No. 66, and urge its passage by your body; and be it further

Resolved, that we protest against the substitution for the anti-sectarian amendment of any amendment prohibiting appropriations of public money to private institutions.

(Signed) George M. Bailey,
Pastor (or presiding officer).
S. Nelson Belcher,
Secretary.

With that communication which I have been requested to submit to you, sir, and which I now submit in pursuance of that request, there was this communication in addition:

July 7, 1917.

Constitutional Convention, State House, Boston, Mass.

My Dear Sir: — Enclosed find a petition which I ask you to read and then present to the Convention, as it is from your district.

Allow me to take this opportunity of giving it as my decided opinion that the Lomasney-Curtis amendment will never be ratified by the people, as it will have as its opponents not only all those opposed to the anti-sectarian amendment and all the friends of the private institutions, but also all those who do not desire to see a policy inaugurated which will inevitably tend to bring our well managed private institutions under the management of the cities and towns of the State. If the Lomasney-Curtis amendment is submitted to the people singly and defeated at the polls, then we shall be just where we are now, with this vexatious question still unsettled. The only way to settle this matter is to get the anti-sectarian amendment before the people in some way. It is sure to secure a majority.

Yours respectfully,
Frederick L. Anderson.

You will observe there, Mr. President, that he states that he does not believe, — that he is positive, in fact, — that the people of this State believe in inaugurating a policy which inevitably will tend to bring our well managed private institutions under the management of the cities and the State.

Now, Mr. President, what is this great principle involved that we hear so much about? It is simply this: That the State, cities and towns may no longer aid private charities or support them in any way, no matter how worthy they may be, and no matter how necessary they may be to the public which they serve. Let me call your

attention to the situation that exists in the city of Quincy. In 1889 certain individuals went to the Legislature and secured from the Legislature an act incorporating the city hospital of the city of Quincy, and that hospital was established. In that act there was a provision that the city of Quincy might appropriate so much money each year, $1,000 in the beginning, toward the support and maintenance of that hospital. Quincy at that time had a population of about 20,000 people. They needed a hospital. It was impossible to get to any other hospital; at least, there were no hospital facilities nearer than the Massachusetts General Hospital on the other side of Boston. Private aid was secured, a plant was built, and with assistance from the city of each year's appropriation the hospital has since flourished. At the present time it takes care of over 1,200 patients every year. Recently the city government of the city of Quincy went to the Legislature and secured an act which enabled them to appropriate $7,000 a year. For the last fifteen years they have been appropriating $5,000 a year.

Whose money is it? Is it the money of the Commonwealth of Massachusetts? No! You talk about preventing the appropriation of the State money for such hospitals. It is not the money of the State. It is the money of the citizens of the city of Quincy, and not one dollar of that money is appropriated except by the vote of the city council of the city of Quincy, with the full knowledge and consent of every citizen of that town. And that money, gentlemen, is necessary toward its support. Take the city of Brockton. The city of Brockton I understand appropriates each year $8,000 toward the support of its hospital. The city of Brockton may or may not be able to support a hospital entirely out of public funds, but is it well now to inaugurate a policy in this State to force the maintenance of these great charities upon the public, when we are bending every effort that we can to carry the great burdens brought upon us by this war? Is it now desirable to support an entirely different policy and to throw over all these well managed private institutions to the management of politicians or to say that they shall not exist a year after next October unless they can take care of themselves? It seems to me an absolute absurdity to take any such position as that. Is it better for us to have a well managed hospital, a hospital upon whose board of trustees the mayor of the city of Quincy sits *ex officio*, and of which there are certain trustees elected by the city council in Quincy, a hospital costing the city only $5,000 or $6,000 or $7,000 a year, or a hospital such as that in Haverhill, which I understand costs the city $30,000 a year? Why should the city of Boston say, or any gentleman from the city of Boston say, that the citizens of Quincy cannot support their own private hospital, if they want to, or assist in aiding it, if it costs only $5,000 or $6,000 a year? Is it connected with the sectarian issue? Not the slightest. I do not even know the religion of the gentlemen on the board of trustees, but if I were to guess I should guess there were some good Catholics as well as Protestants upon it. No question of religion ever is asked of anybody who goes there, but whether a hospital is sectarian or not would make no difference to my mind. I can see no good reason why, for instance, an institution such as the Carney Hospital should not have an appropriation if it wanted it, — if it needed it. The question is: Does it do good in the community? If

it does, and the city or town wants to help support it, why should they not be permitted to so spend their own money?

Mr. LOMASNEY: Do you understand that in 1899, when the resolve to allow the Carney Hospital $10,000 was being considered, there were many protests made against it? Did you come forward on that occasion to speak in favor of it?

Mr. BLACKMUR: Sir, my answer to that is that I knew nothing about the situation at that time, but I should be very glad to come forward and speak for it under the conditions that exist as I understand them to-day. I can see no reason why any sectarian question should enter into the question of charity, — needed charity. I can see no reason why there should be tacked on to this measure a prohibition against a system of local assistance to worthy charities in the communities where they are needed and cannot be otherwise supported.

Mr. LOMASNEY: With the gentleman's permission, I will read to him the protest on that occasion:

> The policy of paying money from the treasury of the Commonwealth to private institutions in the name of charity is a most dangerous policy to pursue. We therefore remonstrate against the proposed appropriation for the Carney Hospital as being a step if once taken that will be fraught with insurmountable difficulties by the demands of numerous worthy institutions, owned and directed by private associations, beyond the control of State authority; we most respectfully suggest that now is the time to pause and consider well the consequences that will follow such legislation.

With your permission, sir, I will state these facts: Document No. 17, issued by the Commission to prepare data for this Convention, shows that from 1860, up to and including 1899, $6,973,982.48 has been given by the State to educational and charitable institutions. Of that amount three Catholic charitable institutions received $49,000. From 1890 up to January 1, 1917, $9,902,637.76 additional has been expended, making a total of $16,876,620.24. Since 1899 no Catholic institution has received any money from the State. If the above protest against the final grant of $10,000 to the Carney Hospital was sound doctrine to apply to a Catholic institution in 1899 why should not the same doctrine apply to all privately owned or controlled institutions now?

Mr. BLACKMUR: I cannot see how that changes the situation in one single iota, for the simple reason, sir, that whether Carney Hospital did or did not receive the aid that it ought to have had is beside the question. The question now, here, is whether in passing the sectarian amendment we find it so advantageous and so necessary to do it that we tack on to it an entirely different proposition that has absolutely nothing to do with the sectarian issue.

Mr. LOMASNEY: I should like to ask the gentleman if it is not a fact that on the occasion he refers to Mr. Sprague of Quincy from his own city was one of the most violent opponents of the proposition?

Mr. BLACKMUR: I will say for the benefit of the gentleman that I am not Mr. Sprague's keeper. I know not whether he did or did not oppose it. In any event I am not responsible for his opinion.

Now, there is an exception placed in this measure that was worded a little differently than it is now, but the purpose of it was this: That cities and towns might furnish certain aid to people who were

unable to aid themselves and who were a public charge. That was the meaning of it and that was the intent of it. Now, I am told this is what happens. Take a city like Quincy, for instance. In this hospital we have about 1,200 patients a year. There are about 300 of those patients, largely coming from the city of Quincy, who are in no sense paupers, who have struggled along in hard times making both ends meet, and perhaps not doing it quite, who are overcome by sickness and disaster and go to a hospital, and who expect and want to pay for their care.

Mr. ANDERSON: Does the gentleman understand that the line he refers to just now has been changed by the committee on Form and Phraseology so as to read: "be in whole or in part unable to support or care for themselves," instead of "at the public charge."

Mr. BLACKMUR: Yes, sir, I understand that that wording was placed there, and placed there at my own suggestion, but it does not really fill the bill, as I explained to the gentleman from Newton. I suggested to him a very much broader amendment, one which was suggested to me by my colleague from Quincy, but I understood that his committee was not receptive to any more suggested amendments and so we let it remain as it is. The phraseology here takes the sting out of it, to be sure, but the effect of it is practically the same, for this reason: That you have to make an application to the city of Quincy for A or B on the ground that he is unable to take care of himself and he goes on the books of the poor department of the city, because it is only the poor department of the city through whom they (the hospital) can get the money. The result is that the patient begs the people in the hospital, in the first instance, not to pass in his name to the city, and promises that he will pay for his board and care, etc. The patient intends to do it. But what is the result? Not many are able to face the added burdens put upon them by the sickness after they get about and try to make both ends meet. They find they cannot meet those extra expenses, and so the hospital bill falls by the wayside. Under the law, unless claim is made in five or ten days, or something of that sort, the hospital loses a claim on the city. There is a large proportion of the citizens attending these hospitals who never pay anything but who would pay if they could.

But this provision is not going to help the case of many of these hospitals that are starting. They need more than the actual money that will be received from time to time from each patient, or from a number of patients; they need to know in advance how much they can get from every source. At the present time the amount is figured out in advance. The city of Quincy can pay $5,000, $6,000 or $7,000, or the city of Brockton can pay $8,000, whatever the amount may be, and that money is appropriated for them and they can rely on it, and they can make the engagements for nurses and the care of patients in anticipation thereof.

What are you going to say also in cases of great exigency, where the hospitals constantly have to have additional help? Take the case of Quincy. We now have, I think, about sixty beds, but they are making provisions for one hundred additional beds in case of any disaster at the Fore River Shipbuilding Company's works. Under the conditions that obtain now we need all the help and assistance we

can get from every source, and so does every other town and city in the Commonwealth that has an institution of this kind.

I think I have answered, Mr. President, the suggestion of my friend from Newton (Mr. Anderson). When he said that politics might enter into these institutions, these private institutions that got money from the cities and towns, he had in view, of course, those institutions which came to the State to get State money. I have here a list of hospitals, private hospitals in this State, about a hundred in all, thirty or thirty-five of which receive appropriations from cities or towns toward their support and maintenance. Does he mean to suggest, for instance, that politics enters into the city hospital in Quincy because the mayor and the city council and all the people of the city together reach the conclusion, through their representatives, of making this appropriation to our city hospital each year? No politics enters into the Quincy hospital, and I doubt very much if there is any in the Brockton hospital or any other institution of that character.

We are told that a great principle is involved here. What is this great principle? We are told that it is necessary for the peace of the Commonwealth that you should insert this prohibition against hospitals, infirmaries and charities. Why, stated in one way the principle is this: That in order to be a good charity it has got to be all public or it has got to be all private. Now, that is a perfect absurdity on the face of it. Is it not just as good a charity if it is assisted and placed on its feet in these small towns and small cities where charities are needed and they could not otherwise have charities established?

And then we are told also that the peace of the Commonwealth demands it. How does the peace of the Commonwealth enter into such a proposition? Is there a demand on the part of the noble and generous Catholics and Protestants of this State or of any other religion that we should not give support to the needy private charities? I should like to ask the gentleman from Ward 5 (Mr. Lomasney) where he heard that demand. I never heard it.

Mr. Churchill of Amherst: It is with very great reluctance that I rise to say a single word on this question. I want to say a word in support of the amendment of the delegate from Deerfield (Mr. Boyden), in the first place because I feel in duty bound to do so in representing a very great body of opinion in my district, and second, because I feel that the amendment is a worthy one. I should not say a word in favor, in spite of the feeling in my district, if I did not think it a worthy one. But I want to say with just as much emphasis as the delegate from Deerfield did that I have not the slightest desire to embarrass or endanger in any way whatever the passage of the main amendment, that I regard the work of the committee as a great accomplishment, and that whatever doubts I have had upon the subject, and whatever differences of opinion as regards the amendment there may be, whatever its likelihood of success, I cannot help feeling as a result of this debate that the agreement of the various interests, the harmony which has been secured upon at least the amendment itself is something that ought to make all of us exceedingly grateful to the committee and to the Convention, and that the people of Massachusetts ought to be grateful for the result.

But I am bound, Mr. President, to call attention to one thing on behalf of these academies. The committee has laid down apparently a hard and fast principle, the principle that no institution which is not truly a public institution shall receive public funds. They base their attitude upon the fact that this is the principle upon which harmony has been obtained, and this is the principle upon which they insist when they say they cannot accept amendments. But they themselves have not lived up to that principle, and they therefore have invited and do invite, as the amendment at present stands, a suggestion as to the value of other exceptions than those which the committee has made. In other words, if these exceptions are justifiable which the committee has made, — the exception with regard to the Soldiers' Home and the exception with regard to the libraries, — it must be because the committee believe that in these cases at least the principle is not binding, that an exception may wisely be made, and they therefore leave it, it seems to me, as long as those exceptions are there, to the rest of us to suggest, — at least we have the right to suggest, — the consideration of other exceptions that may possibly rest upon as good a ground.

I have not the time, Mr. President, to say what I wanted to say with regard to this amendment. I am going to confine myself absolutely to a statement of my attitude in the matter. I want to call the attention of the Convention, in the first place, to the reasons which the chairman of this committee offered on page 12 of his printed speech (Document 334) for the exemptions in the case of the libraries. They did except seventy-five libraries that are not public institutions. I will not read the whole paragraph or two paragraphs in the middle of the page, but they said: "We went into the whole question. There was not any guesswork or uncertainty about it. We found funds could not be transferred, and did except the libraries."

The committee, therefore, realizing that libraries open for public use were "of great assistance to the education of the people," have made this exemption. There is the reason that they offer. The thing could not be made public. These funds could not be transferred. The libraries were of great use to the education of the people, and they therefore made the exemption.

I shall not argue the case of the academies, Mr. President, but from the point of view of the people in my district, where there are a number of these academies, and from my own point of view, that is all of it equally true with regard to the academies. I do not believe that the members of the Convention as a whole really do understand the position which those academies have in our system of education. I assert, — I can only assert it because I have not time to prove it, — that on the whole those academies are to all intents and purposes, except the fact that they are partly privately supported and controlled, upon precisely the same basis as our high schools, and that if you take away the privilege of treating these academies as high schools and appropriating public funds thereto, you leave to the towns in which these academies exist one of two alternatives. Either the towns must duplicate the plant at a very considerable cost both in money to the taxpayers and in education to that town, or some arrangement will have to be made which will bring the expense of the education of the boys and girls in that town upon their parents. They will become private pupils, and their parents will have to pay the expense of their

education. Those schools have been accepted by our educational system into the situation, which is the common situation in Massachusetts, that the cities and towns shall pay for the education of all their pupils, and you are therefore taking away from these children the privileges which we regard as necessary and truly popular in our system of public education. That is the situation that is left, Mr. President, and it is true with regard to a good deal of the private assistance given to these academies that these funds cannot be transferred.

I am unwilling to sit down without repeating that I do not want to see the consideration of this amendment a danger and an embarrassment to the principle of this amendment, but the principle has not been carried out in the case of the libraries, though the exception may be entirely justified. There are a great many people in the towns where these academies exist who feel that they ought to be supported, and who will feel that if exception is made in the case of the libraries they have been treated unfairly. I do not say that they ought to vote against this amendment because of that. They ought not. I myself, Mr. President, am ready to pay a pretty high price for things that I should like to see accomplished, for the sake of accomplishing what this amendment aims and intends to accomplish, but it nevertheless remains a fact, gentlemen, that this amendment is intended not merely for acceptance by a vote of the people, it is intended for harmony, for unity, for a real fraternity. We want to see an amendment, it seems to me, Mr. President, which will go to the people in such form that really all the interests may feel we are thus obtaining a genuine harmony, corresponding, I believe, to the genuine feeling of the citizens of Massachusetts. It is necessary not only to carry this amendment, if it is to have its greatest and proper force, by a majority vote; it is necessary to make the people of Massachusetts feel as far as possible that it is right, and that it does tend to bring about a unity of spirit. It is certain, Mr. President, that if the people feel that these academies stand upon a different basis from truly private institutions, if they feel that they are not sectarian in any sense, nor doctrinal, if they feel that they are really, in all respects that this amendment might take into account, genuinely public institutions, they will feel, however they may vote upon the amendment, as if a means ought to have been found among men who are looking at all interests to take care of these interests too, without spoiling the real intent and principle of the amendment. Unless the committee at the same time can stand absolutely out against any exception (unless it be the Soldiers' Home, where of course it is the National government, as I understand it, with the Massachusetts government that controls), unless the committee can adopt this principle and stick to it absolutely, even at this late day, Mr. President, I think the committee ought to be willing to give consideration to this question. I, for one, say that I stand exactly where a certain great newspaper in this State stands. We ought not to endanger the main principle by exception, we ought not to urge exceptions about which there is really any fundamental doubt. Only those things that may receive ready acquiescence ought to be offered. But I feel bound, Mr. President, to say that I think if the members of this committee were free at this minute to consider the question from the

start they might find it possible, upon the principles they have adopted in the case of the libraries, also to except these schools.

There is just one thing stands in the way of that, Mr. President, and having said that I am through. No academy which does not in all respects truly stand in its curriculum, in its public services of any sort, precisely upon the same basis as the high schools, ought to be excepted. If the amendment of the gentleman from Deerfield (Mr. Boyden) does not confine the giving of public money to academies, to such academies, it ought to be made to confine it; but I submit, it does. If you are to except libraries because they do help the education of the people, though they are partly private in control, if there are academies that conform in all respects to the conditions of our high schools then those academies ought somehow to be given what they have had during these years. The towns should have the assistance that they have had in the money that is privately given to these academies. It is a sad state of affairs, Mr. President, for such academies, and it seems to me for us, if we could not, cannot, work out an amendment which will shut out all possible sectarianism of any sort, and at the same time keep these forty high schools which have some private assistance, as well as the other high schools which have no private assistance.

Mr. WASHBURN of Middleborough: I sought this morning to obtain recognition for the purpose of asking a question in relation to a matter which has been somewhat obscured by the subsequent discussion, but which has been now revived by the remarks of the gentleman from Amherst (Mr. Churchill). I want to ask the gentleman from Deerfield (Mr. Boyden) before I vote on his resolution, if he knows just how many academies are affected by his amendment, and where they are located?

Mr. SAWYER of Ware: No one denies that the passage of this resolution will work some hardship to some of these academies and to some institutions. No one denies that there is a good deal of plausibility in the arguments that they put forth for their own institutions. Mr. President, we have a large question here before us. We have a question which resolves itself into a triple division, whether we shall pass an anti-sectarian amendment; or whether we shall pass an amendment which makes a change in our public policy, — it is a public question and a question of public policy; or whether we shall modify that.

We would be warranted in passing a resolution to prohibit sectarian appropriations only if facts and figures showed to us there was a sectarian menace to the State. Since 1860 we have had in round figures, $19,000,000 given to private institutions: $2,000,000 have been to miscellaneous enterprises, $10,000,000 have been for educational institutions, $7,000,000 for charitable institutions. The sectarian institutions, or institutions under ecclesiastical control in part or in whole, have received only a very small amount from that whole appropriation. Now, it is needless to go around the bush. We understand that a strictly thoroughgoing anti-sectarian amendment is aimed at the Catholic church. Out of that $19,000,000 that church which that amendment aims at has received but $49,000. It received not one cent of the $10,000,000 that went to educational institutions, and of the $7,000,000 that went to charitable institutions it received

$49,000. It received $10,000 for the House of the Good Shepherd, $9,000 for the House of the Guardian Angel, $20,000 in the eighties for Carney Hospital and $10,000 in 1899 for Carney Hospital.

I was a pastor in Brockton in 1899, and I can testify to the popularity of the Carney Hospital at that time. From my own parish several of my parishioners went to that hospital by choice, and they had only good words to say for it; and yet, Mr. President, when that resolve was brought into the Legislature, or when they asked for a $10,000 appropriation, — or their friends did, — in 1899, there arose such a protest against it that the next year the anti-sectarian amendment made its appearance, and each year since then it has been in your Legislature. It has not received any considerable vote. I think in all the years the highest vote it received was sixteen.

We can say, then, that there is no menace from this sectarian source. We can safely say, then, there is no menace from this source, or from any other of our religious bodies, seeking to raid the treasury. Therefore if the only question before us is to pass an amendment that shall deal with the churches there is no need of any amendment whatsoever. Not only does the past show no need of it, but I can testify that the temper of your Legislature, and the temper of your State government, is such that no such appropriation would get by any Legislature or get by the Executive Chamber in any Governor's year.

So, Mr. President, the question that is really before us is whether or not we shall change our public policy, whether or not there is something alarming in the menace of private institutions, *other* than ecclesiastical or sectarian institutions. Taking the period wherein we have the figures, from 1860, dividing it into halves, we find that for the first half of that time the appropriations for private institutions were a little over $5,000,000 and for the second half of that time they were over $12,000,000. This shows a startling increase. Now, I want to call to the attention of this Convention that in 1911, a Governor of this State called the attention of this State to this increase, and at a conference held in the Governor's chamber, when these very resolves to appropriate $100,000 a year for the Massachusetts Institute of Technology and $50,000 a year for the Worcester Polytechnic Institute were under discussion, Governor Foss stated that he believed it was a poor public policy, a poor business policy, for the State to appropriate money and turn it over to people to spend who were in no way responsible to the State and made no report necessarily to it. He went so far that there was a fear in some circles that he might veto those propositions. If any of you will go back to the legislative history of the time you will see that the resolve provides for certain scholarships to be given to certain Senators, and that there were certain other measures and promises taken to secure its passage. This claim, then, that the friends of the Massachusetts Institute of Technology and the Worcester Polytechnic Institute make, that they have an ethical obligation on the State, is not entirely well-founded, when we understand the means that were taken to wrench those appropriations originally from the State.

Now, was Governor Foss wise? Is it wise to continue our policy of taking public funds, turning them over to private enterprises and institutions not elected by the people, not appointed by any elective officers of the people, but entirely private enterprises and institutions?

Why, Mr. President, we who have been in the Legislature know how it is. Here is an enterprise in a town that A, B, C and D, four or five representatives come from. They want to get an appropriation out of the public treasury. Another town has an institution; it wants a thousand dollars out of the public treasury. Here is another town of the same character. They come together and they get thirty or forty votes in a block, and each votes for the other's appropriation that is desired, and any one else in the Legislature who will dare to stand up and oppose those appropriations incurs the enmity of the whole thirty or forty votes. The Governor in his chamber, if he vetoes the thing, incurs the enmity of them all. The result is that there is a hold-up. The Legislature is forced to make the appropriation. Now, have we got courage enough to stop it here? The gentleman from Haverhill (Mr. George) said that the committee lacked courage when it reported the resolution upon the calendar rather than the sectarian resolution. Mr. President, I believe that it showed a fine courage when it reported that resolution rather than the original one.

Why, Mr. President, take the matter of the local fair, — county fair if you like. They come forward with boards of their own election; they are not responsible to the State and are not elected by the State or any political division, and yet they come up here yearly and get thousands and thousands of dollars for their private enterprise, and they have a lobby sufficiently strong that no one dares to oppose them. I have sat on the committee in this Legislature that was appointed partly for the purpose of reorganizing the State Board of Agriculture, and I saw the committee forced way down. I know that every Governor who has been elected for several terms has called attention to the scandal of that board and asked that it be reorganized, and yet they never have got very far with it.

When they say that this resolution offered here by the committee is a resolution for which there is no demand and no need in our practice, and is a makeshift or a cowardly attempt to evade something else, why, Mr. President, they do not properly understand the facts. I trust that this Convention, composed, as it is, of delegates who are not seeking reëlection, will have the courage to stand here and vote in a little different way from what sometimes others, who are seeking reëlection, feel that they are compelled to vote; that we will go ahead and accept the report of your committee.

Now, Mr. President, there is just one other thing, and that is this: We came to this Convention expecting to face a delicate situation and a delicate question. This anti-sectarian issue has developed in the last three or four years, and developed very naturally. As I have said, the anti-sectarian amendment came in first in 1900 and never got any considerable vote, but in 1913 this State elected its first Catholic Governor. Mr. President, he was an estimable gentleman. His record as Governor shows the people of the State to have been warranted in electing him. Your greeting to him on this floor on the first day of this Convention showed that he has your respect when you see him. And yet, Mr. President, there were certain forces in the State that felt his election was a great menace, and so that helped to the securing of a following for this anti-sectarian amendment. Now, it happened that there were also on the State ticket three other men whose religion was of the Catholic persuasion. This was a further opportu-

nity for certain forces to see red. And it happened also, Mr. President, that owing to the Progressive political movement in the State this House for the first time in many years was divided, and that the majority party did not hold control, but was dependent upon receiving the vote of some of the Progressives if it would organize the House and appoint the committees. It is a matter of legislative history that the exigencies of political trading then organized the House. The committee on Constitutional Amendments was so organized that there would be a favorable report for this anti-sectarian amendment, to give it standing in the House and to secure a vote for it; thus, Mr. President, this issue was thrust upon us and a certain member of the Republican party ran for Governor upon the issue.

We have felt that for the last three or four years we have faced a delicate situation. We feared when we came to this Convention that there might develop a condition that would send a question to our people that would bring forth dissension. What happened? Mr. President, you yourself took the move that was a bold move but after all has proved to be a wise move. You made as the chairman of this committee that handles this matter of Bill of Rights a man who, though of the minority party of the great metropolitan city of Boston, had been elected mayor, and who had proved himself to be a popular mayor and showed that he had an understanding of the feelings and ideals of the various races, the various religions. Mr. President, you then put upon that committee some of the most active men of both sides of this question. You put upon that committee men of all classes and all religions, and you left it to them as intelligent, wise, honest and sincere men to get together, and you were not disappointed. They got together, and they have reported into this Convention a resolution that takes the whole question out of the realm of religious controversy, that removes it from religious dissension, that will send forth to the people a question that means a change of public policy and not an attack upon any religious faith or order. It seems, Mr. President, that your committee having acted so wisely, and having done so well, it is our duty, our moral obligation as members and delegates of this Convention, to support them and to send the resolution that they report, out to the people without these amendments that are sought to be attached to it.

Mr. President, it was said here the other day that the academies and that the Massachusetts Institute of Technology and the Worcester Polytechnic Institute had a moral obligation from the State for the continuance of their grants. Why, instead of that, they have a moral duty toward the State, in order to relieve us from the delicacy of the present situation, that they should withdraw those amendments; they should not press for them but should unite with us that we may have a harmonious and united stand in the Convention and before the people, that there may be harmonious and united action on the part of the people.

Why, Mr. President, we are in the midst of a great foreign war. It would seem that somehow it takes a war to always answer these movements that arise against the great bulk of Catholic citizens in our State. We remember the Know Nothing movement of 1853, how then they told us that we could not trust these citizens, how in the war of 1861 to 1865 they went forth and shed their blood side by

side with their fellows of other religious faiths. Do you remember the A. P. A. movement of 1894, and how in the Spanish War they went forth in the same way? Now, Mr. President, in the face of this movement, in many of our cities and towns the great bulk of the young men who are enlisting to go forth and fight for this country are men of this religious faith and this religious persuasion. In my own town there are homes, and all of them of this faith, upon which a placard is placed: "A man from this household is fighting somewhere in France." Is it not time for us to rise above the level of prejudice, and to send forth a question that will not stir up our people in matters of religious controversy and conscience? We may discuss these things as delegates, under the order of parliamentary procedure, harmoniously and coolly. Such things would not be discussed in the same way in the shops by men who touch elbow to elbow and have no such restrictions upon them.

We have a moral duty to the State in the matter of this resolution, and I trust, Mr. President, that we will stand heartily behind your committee and send the matter without this amendment to the people for adoption and ratification.

Mr. Bouvé of Hingham: Far above any question of facilitating the business of this Convention, or of being harmonious, is the matter of right, the matter of common honesty, — and that of the honesty of the Commonwealth of Massachusetts. Mr. President, I am about to speak very briefly, in regard to the amendments proposed by the gentleman from Milton (Mr. Bryant) and by the gentleman from Worcester (Mr. Washburn). Does any person in this Convention believe for a moment, that if it never had been held, that any question of withholding from the Massachusetts Institute of Technology, or from the Worcester Polytechnic Institute, the balance of the money promised by the Commonwealth to them, respectively, upon certain conditions which already had been fulfilled by each of them, and in consideration of which a part of such money already had been paid, would have arisen? Or that if, by any possibility, such question did arise, there would have been any serious attempt to break the pledge of Massachusetts, given, depended upon, and acted upon by both these institutions and their alumni? Does anybody doubt that if there was no Convention, both would receive the fulfilment of these promises on the part of the State, to the last cent? I care nothing whatever about signed and sealed contracts. To me there is no difference between a moral and a legal obligation. The Commonwealth of Massachusetts said to the people of the State, and to the alumni of the Massachusetts Institute of Technology: "If you go out and raise a million of dollars, more or less, and will agree to establish eighty free scholarships for the benefit of the children of this Commonwealth, it, in return, will give you a million dollars in deferred payments, — in partial annual payments, — to help you keep such agreement, and to do it better than you would be able to without such payments." The Institute of Technology raised the million dollars; it agreed to establish the scholarships, and did so, and it is now giving free instruction to eighty young men in fulfilment of its promise. And now this Convention is asked to permit itself to be used as a club to break the honor of the Commonwealth, and to cause it to refuse to pay the promised money, the consideration for which has been entirely per-

formed by the other side. Mr. President, suppose the boot was on the other leg. Suppose that the State had paid the full million dollars, and subsequently, for its own convenience, or because it preferred to apply the money so received to other purposes, the Massachusetts Institute of Technology had refused the agreed instruction to these young men. Would not we say, — would not every man here say that the Institute was committing a breach of contract, — a gross breach of contract; and if not of contract, a gross breach of honor? Every person in this Convention would say so. Then for the honor of the Commonwealth, and because we refuse to say to the friends of education who have raised that large amount of money in good faith, and in reliance upon the good faith of Massachusetts, and because we are unwilling that the young men who are now, and those who hereafter will be, entitled to rely upon the word of the State when solemnly given, should be disappointed, and find their faith in her unsubstantial and not to be relied upon, let us pass these amendments. I appeal to the Convention not to talk of policy or wisdom, but of common honesty. I appeal to it not to sully the white flag of the Commonwealth, which hangs upon our walls, by any failure to live up to the letter and spirit of the agreements, express or implied, made by Massachusetts.

Mr. Boyden: In reply to the question of the gentleman from the first section (Mr. Washburn of Middleborough), I will say that as nearly as I can find out from the Board of Education there are somewhere around forty to fifty academies throughout the State which are supported in part by private funds. Most of these academies were able to make some arrangement with the local town officials whereby they retain that fund and the control of the school is left largely in the hands of the local school-committee, but there are ten or eleven towns which are distinctly affected by this amendment which I have offered. Now, may I say one word more, that is, that it is not a question of the academies, gentlemen, it is a question of the towns. It is a question whether the towns shall be allowed to take advantage of the generosity of people who have left money in order that the children may secure a better education than the town is able to offer them. The gentleman asked for this list which I will give in part: Ashburnham, Deerfield, Hatfield, Georgetown, West Bridgewater, Marion, Harvard and Andover. These institutions, you see, are all in strictly rural, strictly country sections, and I believe that the addition of some consideration for the country districts would be a means of strengthening rather than weakening this measure.

Just one thing more. How will it affect the towns? I happen to know about two towns. In the town of Deerfield if we were not able to take advantage of an appropriation of $3,000 from the town it would be necessary for the town to establish and maintain a high school of its own. That would cost, according to the Board of Education, at least $6,000 to $8,000 annually after a building had been erected and equipped. In the town of Ashburnham, Cushing Academy for many years has educated the high school children of the town for the sum of $1,500. As I understand it, there are fifty or sixty children who go there. If this thing goes through without any amendment it means that the town of Ashburnham in all probability will have to build and maintain a high school of its own. Of course it

would not possibly begin to compare with the advantages which they secure at Cushing Academy, and the expense to the town would be very greatly increased. Now we are willing to have any restrictions put upon us. In our own case the money appropriated by the town is spent by the school-committee, it appears in the annual town report, and there is absolutely nothing that is not open to inspection at any time.

Mr. PELLETIER of Boston: I should like to say just a word on this matter of the academies, particularly after my good friend Mr. Boyden from Deerfield and my learned friend from Amherst (Mr. Churchill) have started a heart-beat here this afternoon. How different their appeals for these little academies from those made for the mammoth institutions of Worcester and the Charles River! My colleague on the left, Mr. Webster, said this morning that the appeal of these academies had a great deal of effect upon our committee; we found it hard to work the head against the heart. I see now the way things are developing, and I am afraid that the heart here may lead the head and the better judgment.

Why has no exception been made in favor of academies? Why, Mr. President, what do you mean by the word "academy"? The gentleman from Deerfield (Mr. Boyden), head of one of those academies, doing a great work there with his young people, appealed to the Board of Education for a list and brings us in five or six names. The gentleman from Amherst (Mr. Churchill) says they are all under the Board of Education. Well, it is strange they have not got a list of them. What about the other twenty or thirty? But be that as it may, I care not for control by the Board of Education. Last year, if I am right, the Legislature had to say to the Teachers' agencies: "Don't you ever again dare ask an applicant for a teacher's position what his religion is." The control by a State board that has tolerated such an abuse in this day and generation and in this State so that agencies have to be forbidden by law from asking that question, is a board that never would fit in this debate and would soon start a fire that methinks I almost hear crackling in this room now.

The difference between these academies and a library is a sectarian question. There is no question of that sort in a library. You can get a book on my religion or your religion; and any library that is really free and really public, if it has not got the work, so far as I know in the history of this State, has always gladly supplied the want and the demand. So far as I know, they are not pushing out books of this kind or that kind, and if so, that can be remedied. What is the condition with these academies? I said when I spoke before on this question that our committee had found itself unable to define the word "sectarian", unable to define the words "religious" and "denominational". Here is one of the very instances: In the academy at Deerfield, they have a reading of the scriptures and a singing of hymns in the morning. Our friend says: "That is not sectarian, it is not offensive, Mr. Pelletier. Nothing is ever said about your religion or anybody else's religion. There is nothing sectarian about it." But I say: "Why, my friend, that is sectarian to me; it is sectarian to my Jewish friend and Lord knows what it is to the unbeliever and the atheist" Define things, you say; make rules for these academies, and put them in some class; they are not offensive. Why,

Mr. President, there is a Catholic convent of this city, where fifty per cent of the young ladies are non-Catholic; the parents of those young ladies say there is nothing offensive there in a religious way at all, they are not asked anything along religious lines. The convent which was burned on yonder hill seventy-five years ago was over eighty per cent non-Catholic in the young ladies attending there, brought there by non-Catholics. That Ursuline Convent, established by non-Catholics, was attended by young ladies who wanted that line of education. Not the religious line. No, they thought as much of their religion as you and I do of ours. But they thought the ladies of that particular teaching society could teach letters and the humanities and music and what not, that went to make a perfect woman and the ideal mother. There were over eighty per cent in that convent, and they would say: "There is nothing offensive there." Go to Boston College on University Heights. If a non-Catholic young man goes there he does not have to be marked on doctrine, he does not have to attend any services, he will not be asked to attend any service where his religion is criticized or dissected. They want to be fair and respect his opinion. So you can go all along the line. We are all trying to be honest. But underneath us all there is uneasiness and there has been uneasiness, and that is the reason for this amendment; that is the reason for all this talk. We do not seem to understand one another. We do not seem to be able to trust one another. My good will I feel you ought to take, and I should take yours. But in these matters in a large State, with a growing and changing and cosmopolitan population, where you are dealing with little children in the teaching proposition, — ah! there you certainly are on dangerous ground. And in order to let these academies in you must first tell me what you mean by an academy; second, you must put into your organic law, into the Constitution, if you want to follow some of the wild-cat States, a description which shall say something about what is religion, and what is sectarian, and what is denominational. Ecclesiastical? Oh, well, that generally means one church; but all these others it is harder to define. The Standard Dictionary will give you a definition, but some of us have reached maturity, and many of us feel that we have our own ideas; and public opinion as to what a word means is better than your Standard Dictionary, if you please.

And so you enter into this academic proposition, these academies, gentlemen, and you open wide the whole proposition. I am not going to say that there are not other towns just as small as these that build their own high schools and maintain them. I am not going to say that in my opinion I believe none of these towns and none of these academies will suffer. I am not going to say that I believe that the trustees of these academies in many cases could transfer their property to the town or municipality. I leave that all to your imagination. But I will guarantee this: That in the Commonwealth of Massachusetts no boy or girl in any town with or without an academy shall suffer for a high school education. Even if the old county of Suffolk has to pay, instead of eighty per cent, ninety-eight per cent of the taxes of the Commonwealth, we will see that the children shall have their high school education. [Applause.]

I said I thought you were getting nearer and nearer the awful question that everybody has avoided here. I want to say this, Mr. Presi-

dent, before I commence running or plunging. One thought has come to me to-day. We have heard so many nice things said, — I do not mean any one in particular, but everybody has said lovely things, — about breadth of opinion and so on. The Massachusetts Institute of Technology wants its money. It would not agree with Worcester Polytechnic Institute the other day or rather Worcester would not agree with Tech. You remember, as the gentleman said, Worcester sat tight when Tech was willing to come forward and agree with the learned Justice. They are not looking for the little academies. Oh, no, academies can get along! They are not looking for the little hospitals! Oh no. Every one is looking out for his own tree, which is apt to be barked! Well, of course that means that we are all quite human here. Even the orators and others who have taken the floor are all quite human. But after all, Mr. President, as I sat here to-day, I said to myself that, with all the professions of liberality, no man has risen here, not even my learned friend from Fall River (Mr. Cummings), to say: "I move as a substitute for all of this that the Commonwealth and every city and town shall have the right to appropriate money for any worthy charitable, educational or religious cause." Why not go the limit? To do that of course you ought to strike out the eighteenth amendment. Why not go the limit? You all say: "It is a good cause, it is a worthy cause, it makes no difference whether the nurse has a white band here, or a white wing, if she ministers to me; and the doctor who ministers to me, it makes no difference what his religion; it is a worthy cause." Well, then, why do you not come through? "It makes no difference whether there is a cross or a weather-vane on the top of the school; if it is teaching pupils what the State says at a certain age they ought to know, what difference if they get a little something moral?" Why not come through with that resolution? And some of you gentlemen were talking that way. See what the temper of this Convention is. Away with this sort of feeling about "My tree and your tree." Let us take the big question, either let everybody in and let the State squander its money if it will, let the city squander its money if it will, — if you think it will; I think perhaps it would not, — either trust the people through the Legislature, trust your city or town government, to spend their own money that they are collecting from the people, or else say: "You cannot spend any public money for any private purpose." [Applause.]

Our committee has not all the wisdom of this Convention (and I admit it), nor all the charity, nor all the breadth. We feel that as far as we know the people, as far as we know the progress of the time, as far as we know the need of the situation, we ought to ask you to put through a measure which says: "No public money for any private purpose," — for the two exceptions amount to nothing. I shall not mention those. You say: "It is going to hurt here and there." Yes. Hurt you, hurt me, — yes; this town, that town, — yes; your tax raised ten cents and mine, in this town, — yes. Hurt the Commonwealth? No, Mr. President! We finally came to the decision to oppose any amendment of that measure. We say that, in our judgment, for what that is worth, this resolution ought to go through. It cannot injure the Commonwealth, but it will be for the benefit of all the people. [Applause.]

The discussion was resumed Tuesday, August 21.

Mr. McANARNEY of Quincy: Last Wednesday I notified the Convention that I desired to be heard upon this resolution. Since then I have been advised that enough members of the Convention have declared themselves in favor of the resolution reported by the committee on Bill of Rights to insure the adoption by the Convention of the report of that committee. That being so I will not trespass upon your time by undertaking to speak as I intended, as to either the merits or the demerits of the main proposition embodied in the report. But, sir, I feel that I should be lacking in the discharge of what I conceive to be a duty to the Commonwealth as well as to myself if I refrained from speaking and giving utterance to my sincere views and convictions on the amendment proposed by the gentleman from Deerfield (Mr. Boyden).

That amendment, sir, proposes to write into the fundamental law of the Commonwealth a principle for which I, at least, cannot stand. It is open, at least in my judgment, to two fatal objections. In the first place, the report of the committee, so far as it relates to educational institutions, does what? It provides that public money shall go to the public schools and publicly controlled educational institutions. It then provides that in those schools and institutions denominational doctrine shall not be inculcated. It is the accepted law of this Commonwealth that in our public schools the tenets of any particular religious denomination shall not be taught. Why is that? Why is it that in our public schools we do not allow denominational teaching? The answer to that question will lead us to the door of one serious objection to the amendment offered by the gentleman from Deerfield. Is it not true that attendance in the public schools of this Commonwealth is in its nature compulsory? The State demands of each citizen that he shall permit those of school age subject to his control to receive that degree of education which the State has decreed to be necessary for a safe citizenship. The children are compelled to attend our public schools, unless, of course, their parents are fortunate enough to be so circumstanced as to provide a similar degree of education elsewhere. But that is the exception; the main proposition is that attendance in the public schools is in its nature compulsory.

Now if the State is going to compel the attendance of children in the public schools and the parents of those children believe in different religious faiths, some of them having no faith at all, it is only fair, it is only right, that in those schools children should not be compelled to listen to the teaching of any particular church or of any denomination that would not meet with the approval of the parents. That is why in our public schools we do not have denominational religious teaching. It is not because the State is opposed to religion; it is not because we do not want our citizenship to be a religious citizenship. From the very first paragraph of our Constitution to its closing pages there breathes throughout its whole a belief in God. We bear testimony to that every morning in this Convention, sir, when we have the divine aid and assistance invoked to guide us in our deliberations. But so far as our public schools are concerned we recognize that attendance in those schools is compulsory and we refrain from teaching any denominational doctrine in them. In that we are doing

the only consistent and the only reasonable thing. But that is different, Mr. President, — that is far afield from the proposition offered by this amendment. This amendment is one which, if you will reflect upon and read it carefully, you will see strikes at the very soul of religion. See what this amendment proposes. It says that the Commonwealth of Massachusetts may give its money to private schools providing those private schools will not teach the denominational doctrine of any religion. It offers a premium for schools that will not recognize religion. Are we going to commit this Commonwealth to such a course as that? If for reasons of fair play we exclude religion from our public schools, as we must of necessity if they are to be public schools, are we then going to say to the people of this Commonwealth: "Extend the doctrine farther, and if you who have charge of private schools shall not teach religion in your private schools you too may come in and receive aid from the public treasury"? Is that a doctrine that appeals to any man in this Convention as a wise and a safe doctrine for the Commonwealth to embark upon?

Do you not know, Mr. President, and does not every man in this Convention know that there are hundreds of thousands of men and voters in this Commonwealth who will not for one moment stand idly by and let the brand of outlawry be placed upon a private school because it teaches that there is a God and teaches the course that in the belief of those in charge of it men should follow in order to reach His throne? That is what this amendment means. Only those private schools shall have money that teach irreligion or fail to teach religion.

On what ground does this gentleman offer this amendment, and on what ground is it advocated by his supporter from Amherst (Mr. Churchill)? On what ground do they say the Commonwealth of Massachusetts should pay money to private schools? Let us analyze their ground; let us see upon what they base their case.

They say that private schools are doing the work of the State, — the town or the State, as the case may be; that they are saving these hill towns and outlying country districts hundreds of dollars every year; that there are towns in this State that are unable to maintain a public high school and that these academies are training the children of those towns and giving them the education that the Commonwealth of Massachusetts says its citizens shall have, and because they are rendering this great public service and work they ask that the Commonwealth of Massachusetts permit those towns, either by paying tuition or in some other way, to give them money toward their support in return for that public service.

Mr. President, I do not differ from the soundness of that doctrine. I am not here advocating that that is not a proper thing for the Commonwealth to do. And if that was the proposition that the gentleman from Deerfield advocated I might not be now opposing him. But he does not stop there. He carries into this exception which he urges what, to my mind, is fundamentally objectionable. He says: "Give this aid only to the private schools that do not teach religion."

Mr. President, if we are to take his claim, as he has stated it, as the ground upon which the State shall give money to its private schools, let me give you a case. I will ask the gentleman from Deerfield to follow me, and any other man who feels as he does, and see if I do

not state a worthy case. In the city of Quincy from which I come we have an institution; you may call it an academy if you want to or you may call it anything you see fit. In that school or academy last year there were 527 scholars. It is a private institution. If that institution were to close its doors in the September coming do you know what it would mean to the city of Quincy, already struggling under a heavy tax rate and an enormous debt? Those 527 children would have to be educated in the public schools. It costs us in Quincy $32 and some cents to educate a child in our public schools. Five hundred and twenty-seven times 32½, if that be the figure in round numbers, would be $17,000. We should have to raise in Quincy next year $17,000 to provide school facilities to take the place of that private school or academy. Not only that, we should have to build a sixteen-room school-house which would cost us to-day something like $125,000, the annual interest charge on which at four per cent would be $5,000, making our burden for next year and for all the years to come until we had paid off the cost of that school-house, $22,000 a year if that private school were to close its doors.

Now that school is doing just the kind of work the gentleman from Deerfield claims his school is doing. It is going out into the streets of Quincy; it is taking inside its rooms the children of the poor and the rich; it is educating them. It is saving the city thousands of dollars a year. Why, if the Deerfield Academy is to receive money, should not that institution also receive money? Can any one tell me? Will the gentleman from Amherst (Mr. Churchill) tell me why the school I am referring to should not receive State aid if he has given the real reason why a private school which renders a public service of the character referred to should receive such aid?

What school am I referring to, he inquires. Why, I am referring to St. John's Parochial School of Quincy. There is a school that is doing the city of Quincy's work, and if the reason that the gentleman gave why a private school should receive money is valid, then that school should receive money.

But see what he wishes done. He says: "No, your private school shall not receive public money if it teaches any form of religion." Now why should you exclude religion from a private school if the principle on which public money is to be paid to a private school is as he and the gentleman from Amherst have stated and their reasons are sound? Can you think of any sound reason? Do you not see the difference between a private school and a public school? Attendance at the public school is compulsory, therefore no child should be compelled to listen to any particular form of religious belief. Attendance at a private school is voluntary; there is no compulsion when your child attends the private school; the parent need not send it there unless he wants to. There is that fundamental difference. One is a voluntary attendance and the other is a compulsory attendance. The State concerns itself only with the intellectual education of its children. If its requirements in that respect are complied with, there is no reason why the State should object if, in a private school, that education is supplemented with religious instruction agreeable to the parents and guardians of the children attending the same.

I submit, it is not a policy which we should adopt to say to the private schools: "We give you money because you are doing the

town's or the city's work, and we will give it to you for the additional reason that you are not doing God's work, — you are not teaching religion." I cannot lend myself to that proposition. Either give it to these private schools because they are doing a public work or do not give it to them at all. Give it on some ground of sane, sound, public policy, and not upon the ground stated in this proposed amendment.

I am not here pleading for the private school; I am here now speaking against this amendment, and this amendment only. And I hope the Convention, sir, will follow the purport of my remarks and not read into my remarks something that I am not putting into them myself.

But there is another objection, an objection which is fundamental. I have waited, Mr. President, from the beginning of this debate until this moment, for some one of the supporters of this amendment to show any legal authority under which the Commonwealth of Massachusetts or any town in this State could legally pay tuition to these academies for the children they receive and educate, and I trust that before this debate closes some one of these gentlemen will show authority for so doing, — a decision of the Supreme Judicial Court, saying that it is lawful to do so. To my knowledge the question has been passed upon, — not by our Supreme Judicial Court. Our Supreme Judicial Court never has passed upon the question of whether a private academy in a town in which there is no high school may receive pupils and the town legally pay money to it for the tuition of those children. It is true the Legislature has undertaken to pass several acts authorizing the towns to do so, but we are dealing with the Constitution. We are not dealing with a legislative act. No legislative act can rise higher than the Constitution, and if it is not constitutional an act of the Legislature is a mere nullity. Therefore I trust that the gentlemen when they quote their authorities will not rely upon acts of the Legislature, because acts of the Legislature do not interest us in our present discussion.

The Legislature had this problem before it in 1895, and, Mr. President, there was at that time in office in this Commonwealth a man whom I believe to have been in his day one of the great lawyers of the State. He was a man who never dodged an issue, and when a legal problem was put up to him he decided it squarely upon its merits. And when the Legislature asked him for his opinion on these two questions he did not hesitate to give it. Mark you the questions, and then his answers:

> Is it constitutional for a town to grant and vote money to pay the tuition of children attending an academy in said town in accordance with St. 1895, c. 94?

Now the Act of 1895 referred to was one providing that towns that did not have a high school might send their children to private academies and pay tuition to the private academies, a case on all fours with the case the gentleman from Deerfield presents to you. The Legislature was not satisfied with that question; they put a further question to that officer. Mark you this question:

> Is it constitutional for a town to grant and vote money to pay the tuition of children attending an academy outside of said town?

They wanted to find out whether a town had authority to pay tuition for children attending these private academies in the town, and then, did they have the authority to pay money for children's tuition who attended academies outside the town, the towns themselves not having any high school. And what did that gentleman say? Let me say, Mr. President, he is the only official of this Commonwealth, so far as I have been able to learn, who ever has faced the issue and answered it squarely, — and I do not except from that statement even our Supreme Judicial Court. I read to you the opinion of the late Hon. Hosea M. Knowlton when Attorney-General of this Commonwealth. After dealing with all the facts and setting forth the case and citing the eighteenth amendment to our Constitution, he comes in his opinion to this significant and in my judgment controlling language:

> It is of no consequence that the tuition of such pupils may not be paid from money especially appropriated by the town for the support of its public schools.

You know what that means. The eighteenth amendment said:

> All moneys raised by taxation in the cities and towns for the support of public schools, and all moneys which may be appropriated by the State for the support of common schools, etc.

Mr. Knowlton said it makes no difference whether this money is raised in that manner or not.

> The question is not one of mere appropriation. The purpose of the constitutional amendment was to prohibit the use of public funds for the education of the children of the Commonwealth —

Now mark you these words:

> *in any institution,* however conducted and whether sectarian or not, the control of which is not in the municipal authorities.

Mr. President, here we have the law officer of this Commonwealth advising the Legislature that the eighteenth amendment prohibited the payment of money to these private institutions, sectarian or non-sectarian, teaching religious doctrines or not teaching them, so long as they were not under the control of the public authorities. And, sir, I say without fear of challenge that that decision and that opinion has never been attacked or overruled in this Commonwealth. Further let me read you:

> If the expenditure be for the purpose of the education of the children of the town, it is within the spirit of the prohibition of the amendment.

In the face of that opinion of the Attorney-General to the Legislature some of these academies have been receiving money every year. They have been receiving money from the public treasury, and nobody has questioned the legality of the payment of that money. And why? Merely because the academies did not happen to be sectarian. And yet every time a dollar was so paid, a dollar was illegally paid of the public money, if the opinion of the late Attorney-General Hosea M. Knowlton is good law.

The only case that I have found in which that opinion has in any way been dealt with by our Supreme Judicial Court is in the case of *Fiske* v. *Huntington*, 179 Mass. 571, and there the court does not differ from Attorney-General Knowlton, but it repeats his decision and says, without deciding the question as to whether he was right

or wrong, that the particular case then before it could be disposed of on other grounds and was so disposed of. If his opinion was wrong the Supreme Judicial Court could have said so.

Mr. President, on the grounds that we ought not to write into our fundamental law the doctrine, the hateful doctrine, that it is right to give money to private academies for the tuition of children attending them providing they do not teach religion, I oppose the amendment offered by the gentleman from Deerfield. The reason why such academies should receive public aid as stated in the amendment is one that runs counter to every fiber of my being, and that is why, as a sworn delegate to this Convention, I cannot sit idly by and see such a declaration written into our fundamental law. I am not raising any question so far as the public schools are concerned; perhaps it is right and proper that there should be written into our law a prohibition against teaching religion in our public schools, for the reason, as I stated, that attendance in the public schools is compulsory. But if private schools are to receive aid give it to them on some broad general ground upon which every school will stand alike. If you do not believe that public money should be given to private academies, then say so; but say that you do not believe that public money should go to private schools. Do not go out of your way to offer a gratuitous insult to the Deity Whom we recognize and before Whom we bow.

Mr. President, it is also my contention that as a matter of law the amendment offered by the committee on Bill of Rights does not take away from those academies any legal right to public money they have to-day, because in my opinion to-day they have no legal right to receive money from the treasuries of the towns and cities for the teaching of children therein and when they do so receive it they receive money unlawfully and illegally and it is a practice which should be stopped solely because it is unlawful and illegal, and on no other ground. [Applause.]

Mr. John W. Daly of Lowell: I have listened patiently and with great attention to the able arguments in favor of and opposing amendments to this resolution. The opinions expressed here, and the reception accorded those expressed opinions, clearly indicate what the attitude of this body will be toward any attempt at modification of its provisions. I should be short of imagination, lacking in judgment, incapable of any power of discernment, did I not appreciate the significance of this and understand fully what the final action of this body will be upon this question. However, notwithstanding this, irrespective of advices to the contrary and realizing wholly the hopelessness of my position, I feel that I must at least give brief expression to a defence of my own convictions, however futile it may appear. I would gladly subscribe to the resolution as presented by the committee on Bill of Rights, for, like the majority of this Convention and undoubtedly like the vast majority of the body politic of this Commonwealth, I should like to see this question settled for all time. The sincerity of purpose which prompts the promoters and the supporters of this measure in their desire to eliminate what seems to be a sore spot in our social and commercial life, to my mind is above question. I have waited, and I have watched the proceedings very carefully, hoping against hope that before final action an amendment somewhat modifying the very drastic restrictions imposed by this

resolution upon certain institutions, and which might be acceptable to the committee on Bills of Rights, might be offered to this Convention. As it now stands it means that no money shall be appropriated by the State, by any city or town, for the support of institutions like the Lowell Textile School, the best equipped of its kind in the entire world. I have had prepared, and I have in my possession, facts and figures, statistical records, extracts of statements made at hearings where requests and demands were made for State and municipal aid for this institution. Out of consideration for the temper of this body I have decided not to make use of this documentary evidence in support of my contentions. For obvious reasons I feel that it will be quite unnecessary for me at this time to refer to or to discuss the contents of these papers. My only desire is to call the attention of this body to the Lowell Textile School and to ask this Convention to weigh well their action before anything may be entered here which in any way will affect the future welfare of this great institution. The people of this Commonwealth, and particularly the citizens of Lowell and vicinity, have an opportunity to get an education in keeping with their means, and because of this it will be of great benefit to the community. Its benefits should not be curtailed in any manner because of the fact that the State from time to time may be called upon for assistance. Better by far to regulate the activity of any class that might come under the meaning of this resolution than to interfere with the efficiency of such means where our youth and others may get that information of which otherwise they might be deprived under the curtailment of such means as this resolution contemplates.

At a recent session of the Committee of the Whole the gentleman on my left in the third division, the member from Saugus (Mr. Bennett), raised the point and asked the question: "In the event of this measure being submitted to and accepted by the people what actually will be the result of such action upon such institutions?" His inquiry and subsequent statement, together with the statements of the member in the third division upon the same afternoon, strengthened a doubt which already had existed in my mind as to whether or not the insertion of such an amendment in our Constitution would hamper seriously the future efficiency or welfare of these institutions. It seems to me, Mr. President, that the approval of the Curtis amendment will mean one of two things. I understand, of course, that in all probability the schools will continue their teaching, but under somewhat changed conditions, and it strikes me that the inevitable governmental supervision will mean the substitution of political for private or semi-private management. Whether or not this would be an improvement I am not prepared to admit. In my desire to reach an intelligent solution of the problem I sought information from a source which I considered would be most authoritative, but for some unaccountable reason the chairman of the board of trustees of the Lowell Textile School denied my urgent and pressing request for an interview, and as a consequence of my ineffectual efforts to secure certain necessary information I am still in doubt not only as to the interpretation of this and similar parts of the resolution, but I am at a loss to understand the passiveness and the inactivity of those who control or those who are in charge of this institution at a time like this, when the confirmed action of this body may mean so much to those who in the past have been deriving a benefit from this institution

and to those who in the future might be afforded the same privilege. However, I am in no way concerned about those who control or those who are in charge of this institution. These men can take care of themselves. Any man who directs great capital ordinarily will be able to secure all that he desires both for himself and his dependents. The great interest should be in the average citizen. The welfare of the State demands that he shall have a fair share in the advantages of prosperity. Therefore my interest and my concern is for the youth, for the young men and the young women of my city and of my State, and I feel that they should not be deprived in any manner of any opportunity for learning or advancement in the trades, sciences and professions.

Being an interested resident citizen of the city where the school is located, I have been permitted at times to inspect it and have been enabled thereby to keep in touch with its facilities. In the past it has been my privilege to be in a position where I could and did vote public appropriations for its support. I have heard its praises sounded from the pulpit, in the courts, through the press and from the public platform, so that any hasty or ill-considered action of mine or of any deliberative body would be a source of regret to me and should be a matter of deep concern to the entire State.

I have been told by my colleagues, I have been informed by several of the delegates with whom I have become acquainted since the sixth of June, that should this measure become a part of our Constitution eventually, or in all probability, the State will take over these institutions and they will be conducted much as our grammar schools or high schools or our State normal schools are conducted at the present time. If there was any assurance of this there would be no cause for protest, no cause for alarm. But no such assurance has been given, and I know that no such assurance can be given. Is there any evidence of such a belief in the minds of the delegates who have been so persistent in offering their amendments, asking for a modification of the resolution favoring the institutions in which they apparently are so vitally interested? These men are much better versed and they have had far more experience in legislative affairs than I. Then is it not fair for me to say, am I not justified in saying, that they too have their doubts, that there is uncertainty in their minds as to what the final outcome of this movement will be?

At a recent session the question of contract, of the moral or the legal obligation existing between the State and certain other parties, was discussed. I admit that in so far as I know there is no legal obligation existing between the State and certain private educational institutions which I have in mind; but, as every member of this Convention knows and understands, there is, as there should be and as there always will be, a moral obligation existing between the State and its people in so far as aiding them in their desire for advancement along any line of worthy endeavor. It is not my intention to get into debate on this point, realizing that any comparison here requires a trained legal mind, and that it can better be made by those who are accustomed to weigh and analyze and test evidence, or, as in a specific case of this kind, by those who have made a special study of social and political problems. Nor am I giving you on this point my personal view of the matter. I am trying to express briefly as best I

may the opinions of some of my constituents, of the voters of the Fifth Congressional District, of which I have the privilege to be one of the representatives; and their contention is that inasmuch as the State is the people and the people are the State, they assert that an impression, an erroneous impression of course, has been and is being created among a part of those who will have the final deciding voice in this matter, that an attempt is being made here to make it constitutional for the State to violate its moral obligation to itself. Should this impression become prevalent and be allowed to prevail, what will happen? Is it not self-evident that long before the question is settled at the polls next November an undercurrent of resentment and dissatisfaction, of misunderstanding and confusion, will be the result and all our labors, though with the best of intentions, will have been for naught?

Anticipating your permission, I should like to ask a question: Is this resolution, together with the amendments which have been offered, to be decided upon the merits of the men behind them, or is it to be decided, as it should be, strictly upon the merits of the measure itself?

I may be all wrong in my analysis of this question, but inasmuch as a doubt does exist in my mind even of the justice and the fairness of this change, should it occur, I should be derelict in my duty did I not take advantage of an opportunity that presented itself and protest against anything which in my opinion might be detrimental to the interests of the Lowell Textile School. Having no desire that my motive should be understood as a selfish one, what I have said with particular reference to this institution applies equally as well to all institutions of a like nature throughout the State. If you open up any section of this proposed restricted area in favor of any institution, why not lower the bars altogether and let them all come in, by which I mean, of course, defeating the measure entirely?

At this time I want to say that I shall gladly accept any additional, or definite, accurate information that may disillusion my mind or have any tendency to set me right, otherwise my vote as I intend to cast it will be with the utmost reluctance.

Mr. COLEMAN of Boston: It is not my purpose to prolong unduly the discussion of this topic, but I feel very earnestly that I do want to register my strong conviction against all the amendments, save one, which have been proposed to the resolution offered by the committee and to give my hearty and unqualified assent to that resolution. I do this not only as a citizen of the Commonwealth but also as a man of the church, a man who has spent a great deal of his time and energy outside of business affairs in all of the activities of the church with which one of my faith may properly be connected. I want to say from both of these points of view that I believe the committee on Bill of Rights has done a magnificent piece of work for this Convention and for the people of Massachusetts, and that if we adopt their resolution and it is accepted by the people next November, as I thoroughly believe it will be, the members of this committee will go down in history gratefully remembered for years to come by the people of Massachusetts for the honorable, square, fair, friendly way in which they have dealt with and settled one of the most difficult, dangerous and delicate problems which has harassed and perplexed the people of this State for a generation or more.

I want to call your attention, Mr. President and members of the Convention, to the remarkable demonstration that the committee gives in its own personnel of what has been accomplished, and I believe it is a foretaste and an augury of what we are going to see at the polls in November. Recall a few of the gentlemen who are fathering this resolution. There is the chairman of the committee in the first division (Mr. Edwin U. Curtis) and the gentleman in the third division (Mr. Lomasney), so famous because of his connection with old ward 8. Recall, please, that one of them is a rock-ribbed Republican and the other is a red-hot Democrat. One is of the Protestant faith; the other is a devout Catholic. One has sprung from the classes; the other comes from the masses. And yet they are joining heart and hand in their advocacy of this measure, upon which one might suppose they never would be able to agree.

And we have in the membership of the committee, Mr. President, another exemplification of how opposites have been wonderfully brought together in this resolution which has been unanimously presented by the committee. I refer to those two gentlemen on the committee who have been recognized more or less as the champions of the two opposing sides. I happen to have known one of them personally and intimately for a number of years, — the gentleman from Newton in the third division (Mr. Anderson). I know some of the qualities of his mind and heart. I know how accurate and painstaking he is, how faithful he is to every obligation. But he has demonstrated to me in his work on this committee, and in the part that he has taken in this Convention, a quality that I did not know he possessed, or at least I did not know that he possessed it to such a remarkable degree, and that is the quality of gracefully and readily yielding his own opinion, his own position in favor of what he has come to see to be the larger and the greater good. I had an impression that was given to me of the champion on the other side, the district attorney of Suffolk County (Mr. Pelletier). I was led to believe that it never would be possible for me to see eye to eye with him on this topic. When he made his last speech on the floor of this assembly the other afternoon, following the speech of the gentleman from Newton (Mr. Anderson), I was delighted beyond measure to find that in heart and mind I could give absolute, unqualified and unreserved assent to the position taken by both of these gentlemen. Furthermore, Mr. President, I am highly delighted to find myself in agreement with another member of this committee with whom I never had been able to be in agreement before on political lines. I refer to the gentleman from the new ward 5 of Boston, who sits in the third division (Mr. Lomasney). During my short political career, whenever I have appealed to the people for their vote in city or State he always has seen fit to honor me with his opposition. Nevertheless, I have been able to win out on all of those occasions. I have been delighted in this Convention to become personally acquainted with him, never having had that opportunity before. I am rejoiced again beyond measure to find him giving voice to a sentiment and principle on this great question with which I am wholly in accord.

Mr. President, it would seem to me that if this Convention did nothing else (and sometimes I am almost inclined to believe that it will do nothing else) than to pass this resolution presented by the com-

mittee on Bill of Rights, it would have done enough to have made it well worth while, in spite of the great cost which is attached to the holding of this Convention. The settlement of this problem in this Convention by the general agreement of both sides, and the adoption of the amendment by the people at the polls, when men of every party and every race and men of every faith and of no faith, will go to the polls and cast their votes in favor of the passage of this amendment of the Constitution, will signify a great day in the history of Massachusetts.

And it seems to me, Mr. President, that the educational institutions that are advocating these amendments in favor of themselves are making a serious mistake, not only with reference to the great issue that is before us but also with reference to their own interest in the long run. I am not unfavorable to any one of these educational institutions. I have lived almost under the shadow of the buildings of the Massachusetts Institute of Technology all my life. I was born in the very same year in which it was established. I had hoped to finish my own education within its walls. I am proud of all that it has accomplished. I regard it as one of the great assets of this State. I know something of the situation with reference to these educational institutions, these academies, in the western part of the State, and I wish them all well. I should not like to take a dollar away from them. But it seems to me, Mr. President, that it is short-sighted for them to press their financial interests in the face of this great overwhelming problem that affects the entire life of the whole Commonwealth of Massachusetts.

I hope with all my heart that when we come to vote on this resolution from the committee on Bill of Rights that we shall be able to pass it not only by a considerable majority, but by an almost unanimous vote. [Applause.]

Mr. Kilbon of Springfield: Ever since the gentleman from Fall River (Mr. Cummings) addressed the Committee of the Whole on the proposal now before us, I have been waiting for some word to be said in direct response to his point of view, — not in opposition to it, but in response to it. I would have wished the word to come from lips free of all possible taint of professionalism, but as the word has hitherto been unsaid, I can only strive as honestly as I may to leave aside all professional prejudice, and speak as a citizen, not without convictions indeed, but with the conviction supreme that now and here I have neither the right nor the wish to consider anything but the good of the Commonwealth and of all its people.

The gentleman from Newton (Mr. Anderson) in reviewing the other day the history of the agitation for the so-called anti-sectarian amendment, told you that that amendment was indorsed by the Congregational conference of Massachusetts with only a very few dissenting voices. I have not yet ceased to be proud that my voice was one of those few. I judged that I could discern in the attitude and methods of those who urged the measure, — a measure in itself not only unobjectionable but so far as it went desirable to me, — features that appeared to me to be against the public welfare. I believed then and I believe now that the principle embodied in the proposition before us is not only wiser as a basis for general agreement but also more correct as a matter of public policy.

I shall not take the time of the Convention with any argument regarding this belief, which I judge the Convention shares. What it seemed to me desirable to do was to put in, as an individual, but as an individual Protestant, some considerations as to the relation between the Commonwealth and the church.

To my mind, — and in this opinion I certainly do not conceive that I speak for the body of Protestant people, — the separation of church and State is a regrettable necessity. It is no less necessary because it is regrettable; it is no less regrettable because it is necessary. It is regrettable because religion is essential to the welfare of the State. Only as its citizens are moved, directed and restrained by the principles of religion can the State remain sound and secure. When human society shall reach the goal which the Old Testament pictures as the Messianic Kingdom and which Jesus called the Kingdom of God, men no longer will be aware of any real distinction between church and State. But men now are very fully aware of such a distinction, and the world has few difficulties greater than those that arise from attempts to put in present operation ideals that belong to a future stage of development. The separation of church and State is necessary, — necessary for the welfare of the church; necessary for the welfare of the State. I shall ask no further proof of this broad statement than can be found in the history of Massachusetts. The colonists maintained their ministers with town funds. They gave them no vote, but they did give them an influence often amounting to autocratic direction. To some of these ministers, like John Robinson, who never set foot on these shores, like Thomas Hooker of Hartford and John Wise of Ipswich, American democracy owes an unspeakable debt. But on the whole the plan worked badly for both State and church. Boston has not always, we judge, been governed just as the best of its citizens would like to have had it governed. It has been governed at some times in periods after his day with less honor and integrity and with more graft and corruption than it was governed in the days of Cotton Mather; but I do not believe that Cotton Mather was any better boss for Boston than men who since have held that kind of position.

As we look at the people who profess and call themselves Christians, — still an overwhelming majority of the citizens of the Commonwealth, — we find among them two different ideals of the nature and function of the church. One ideal is the Catholic. To those who hold this ideal it appears that God, sum and source of all truth, has made that truth known to men and has intrusted it to the keeping of His church. To that Church may come every man burdened with sin, tossed with doubt, or bowed with grief, and find in the truth believed always, everywhere and by all the secure haven of refuge and restoration. Its God-inspired methods and ministers, its sacraments and its worship, are so adaptable to human needs that every willing soul may find in them the response of the divine love to the cry of his longing, and may gain from them strength for the work of life. There is, I take it, no truly religious man to whom an ideal like this does not make its appeal. The glorious power of it is sufficiently proved by the deep devotion to it of great multitudes of our citizens.

But alongside this ideal, in contrast always and in conflict sometimes, is the Protestant ideal of the church. To those who hold this ideal God seems to reveal Himself progressively by a process of indi-

vidual experience. In mutual contact and fellowship, in the honest purpose to walk together in the ways of the Lord, known or to be made known unto them, whatever it may cost, men who hold this ideal have seen the light of ultimate truth gleam before them and beckon them onward, each by his own free way, to the joyful attainment of the goal. The knowledge of faith becomes ever the richer knowledge of proved experience, and the man who so walks finds in himself the growing assurance that he is on the right way.

This is no place to argue one's preference for one of these ideals over against the other. The point I have wished to make in stating them is simply that each of them has a right to be, even though they be obviously incompatible. I often wish, though I wish in vain, that it were possible to be both Catholic and Protestant. I believe each church is better for the presence of the other. The two ideals, while they will not blend, do so check and direct each other that the progress of the whole is saner and stronger than it can be under the unchecked domination of either ideal.

If, then, the State try in any way to change the current of men's thinking and men's devotion, if it work in any way to increase or to diminish the power of the one ideal or of the other, it is laying its hand upon the ark, and, like Uzzah, it must suffer the consequences of its profane interference.

The State perceives this fact throughout America, and so far as any direct interference is concerned, it is guiltless. But indirectly it finds itself involved in difficulty. Education and charity involve contacts between the State and the church. Charity is the child of religion. The charity that grudgingly doles out enough to keep body and soul together because the State will not leave its citizens to starve is one thing, and the expression of the Divine Love by sympathetic charity is another. Education that leaves without culture the religious faculties is education that cripples by partial development. The conscience to which the gentleman from Fall River (Mr. Cummings) alluded, that demands the training of children with due attention to religion and that demands that charity be administered for the love of God, is a good conscience. It would be well if it were more widespread. Yet I must feel that those who hope, like the people for whom the gentleman from Fall River spoke, that the State may sometime honor this conscientious conviction by taking the burden of its fulfilment upon itself, are looking the wrong way. Surely it is wiser for us so to direct our policies and so to cultivate the spirit of tolerance that we may hope for the day when the burden of care and expense may be relieved by a proper division of the time of all our children between the education the State must provide for its own protection and that which the church must provide for the full development of those intrusted to its care. So may we look for an administration of charity in which the State cordially assents to the supplementing of its own activities by the free ministrations of the church. These things must wait; but because I believe that the measure before us will hasten the day of their coming, I shall vote for it with joy and advocate it with zeal. To me it is not a compromise, a mere way to get by with a desired amendment; it is a policy, new, but wise, which can be heartily commended to the Commonwealth.

I shall vote, therefore, with great joy for this proposition, with a

single exception. I find that in some form I must support the amendment of the gentleman from Milton (Mr. Bryant) relative to the two schools of technology. We present a new policy for adoption. We find that the Commonwealth has made a pledge to two institutions. I regret that pledge. I cannot picture myself, were I a graduate or trustee of either of them, contemplating without a degree of shame the application to the State for such an appropriation. But I am unwilling to hinder the carrying out in full of the promises of the Commonwealth, whether those promises have the binding force of a legal contract or whether they lack such force. For three or four years after the new policy goes into effect, it may be postponed in these two instances without hurting the principle.

But, sir, if this Convention should have done nothing more than establish this principle with the general assent of all who hold the two irreconcilable ideals of the church, it will have justified its existence and will have prepared the way for the final solution of one of our most perplexing problems. I rejoice not merely that the committee has agreed, but that it has agreed to the thing that really is best. [Applause.]

Mr. BARTLETT of Newburyport: It seems to me, Mr. President, that the members of this Convention are very near together as to the principle of not appropriating public money for ecclesiastical purposes and the principle of not appropriating public money for private institutions. They should be put briefly, it seems to me, in two propositions. They could be written in ten lines, — the one proposition and the other proposition, — as is becoming in constitutional amendments, and should be submitted to this Convention in that way rather than in the way in which they have been submitted.

"No public money for church purposes", — we can almost state it in those words.

"No public money for private uses", — we can almost state it in those words.

But instead of that we have got the two mixed up in a long resolution which, it seems to me, it is not becoming for a Convention of the Commonwealth of Massachusetts to pass. We have the two in separate amendments proposed here before us. In the amendment proposed by the gentleman from Haverhill (Mr. George) we have the anti-ecclesiastical amendment, and in another we have the anti-public-money-for-private-uses amendment. It seems to me that we ought to vote upon them separately, and under the rules of this Convention I remember it says that when a question is susceptible of division it may be divided. Before there was any resolution offered by the gentleman from Haverhill we had before us in the beginning what is called the Anderson amendment, which was as clear as a mountain stream on the question of no money for sectarian purposes. I have received communications favoring it; this Convention has received a lot of them favoring it; and I want delegates to have a chance to vote upon that proposition. Therefore, Mr. President, I move, as a substitute, to amend by substituting the original Anderson amendment, so called, being document No. 66 of the Convention documents, and we shall get a vote at least upon the question of whether this Convention wants to vote upon those two propositions separately.

On the question of public money for private purposes, it seems to me that what the gentleman from Deerfield (Mr. Boyden) is trying to get at is not against the principle there. His resolution is unfortunately phrased, in that it says: " . . . raising and appropriating money for such academies." That is not what he wants to get at. What he wants is to give to towns the right to save money by sending their pupils to academies and thus get rid of the expense of supporting high schools. It is not any more a devotion of public money to private uses than it would be if I go out and hire a cab or an automobile for an hour. I am not doing that for the benefit of the cab owner; I am doing it for myself, for my own benefit. That which the gentleman from Deerfield wants is not contrary to the principle of this measure. What he wants to get is the privilege for these towns to save money by sending their pupils to these academies and having the benefit of their funds. The amendment which I offered in the Committee of the Whole, and which the committee rejected, provides that "Nothing herein contained shall prevent any city or town from expending money, raised by taxation or otherwise, in the education of its school children in any school approved by the school-committee and not under ecclesiastical or sectarian control." Mr. President, I move this in amendment of the amendment offered by the gentleman from Deerfield (Mr. Boyden).

Mr. STONEMAN of Boston: I am called out of town to-morrow on a matter of great importance and cannot be here when the vote on this resolution will be taken. I am heartily in favor of resolution No. 347 and opposed to all of the amendments except the perfecting amendments which the committee on the Bill of Rights will offer, and I desire to be recorded in that way.

Mr. BRYANT of Milton: I desire to offer this amendment: To amend the amendment of the gentleman from Fall River (Mr. Morton) by striking out the words to be inserted and inserting in place thereof the following: "and to carry out the provisions as now defined of chapter 78 of the Resolves of 1911 and of chapter 87 of the Resolves of 1912."

Mr. President, I offer this amendment because it seems to me in the briefer form to state what I have already stated in my other amendment. I do not propose to recount the reasons why I offered that other amendment, further than to say that they apply to my present amendment. I am not proposing this matter, as I have stated before, on behalf of the Massachusetts Institute of Technology or the Worcester Polytechnic Institute. I did not introduce it at their request, or at the request of anybody. I take the full responsibility for it myself. It was introduced without their knowledge, and I have had no conferences with them about it, but I am pressing it because I think it is simple and ordinary justice for the Commonwealth of Massachusetts to carry out. Mr. President, I think I have more faith in the so-called sectarian amendment than even some of the members of the committee on Bill of Rights, because I believe that it can survive even if it does justice in this particular. I already have stated my reasons for the amendment, and I now ask unanimous consent to withdraw my amendment printed on page 2 in favor of the amendment which I now offer.

Consideration of the resolution was resumed Wednesday, August 22.

Mr. Powers of Newton: I desire, Mr. President, to say just a word in explanation of the amendment which I offered last week and which is printed in the calendar. That amendment has no relation, either directly or indirectly, with the subject which the committee have had under examination. It in no way relates to what is called the sectarian issue. It is not to be classified in any way with that issue. For the past fifty years or so there has been a discussion among lawyers as to what the eighteenth amendment to the Constitution really intended. It has been argued on both sides; by some that the State has control over its appropriations for local education; by others it has been contended that the State has no control over the subject of appropriations for local education. All lawyers I think agree that the language is at least ambiguous.

Now, all my amendment seeks to do is to leave it to the Legislature to straighten out a situation which at least has become irritating in connection with the Board of Education and the local boards of education. In other words, if this amendment be adopted it simply leaves it to the Legislature to determine by what authority the money appropriated by the State shall be expended. For instance, if the Legislature to-day were to make appropriation of a million dollars to be used in the small towns and the manufacturing centers, in order that the children in those localities should receive education of the same standard and the same quality as those in the more favored towns, the State, it will be claimed, has no control as to the manner in which that money shall be expended. Now, I dislike very much, Mr. President, to have this Convention adjourn and not have that question settled; and since it has no connection whatever with the amendments that have been offered relating to sectarian education, I move you that this amendment which I have offered be considered after all the other amendments are disposed of in connection with and just before the main question is voted upon.

I have nothing further to say except that I want to divorce this amendment from these other amendments which have been offered. I want to say one word further, and that is that I am in full sympathy with the report of the committee. It is my purpose to support this committee; and my belief is that there is no reason why this amendment should be voted down by this Convention simply because it is an amendment to the report of the committee. The work which the committee has done has been most admirable. They have settled a vexed question, which has been disturbing the State for a good many years. I expect to see the resolution adopted. I expect to see it go before the people and be adopted by the people. But there is no reason why the amendment which I offer, which is in the interest of education and which has the support of the Board of Education, and so far as I know has the support of every one who believes in broadening the educational system of this State, should be voted down by this Convention. Therefore I move you, Mr. President, that this amendment be considered just before the main question is taken up, after all the other amendments, which are supposed to be more or less hostile to the report of the committee, have been disposed of.

Mr. Curtis of Revere: I should like to ask the gentleman who has

just taken his seat if this phase of the question has been discussed before the committee on Bill of Rights.

Mr. POWERS: I am not sure whether it was discussed there or not. It was not called to my attention until some two weeks ago. It was brought to my attention by the chairman of the Board of Education, and he was very anxious that this motion should be pressed here in the interest of State education.

Mr. PELLETIER of Boston: Would not the effect of this amendment be to throw this whole question into the hands of the Legislature?

Mr. POWERS: I should say it would not have the slightest effect, for the very reason that it relates only to public education, and public education under State authority, and that is just what the committee is attempting to work out, — that all public education shall be under State authority, — and this amendment is entirely in line with what the committee is seeking to accomplish.

Mr. LOMASNEY: If this amendment prevails does it not really interfere with the school-committees' operations and their control in every school district in this State?

Mr. POWERS: My reply to that is that this amendment does not interfere with anything. It simply leaves the Legislature to determine what authority shall be exercised by the State in State appropriations, and it seems to me that the local school boards can well afford to leave the matter with the Legislature. I feel quite sure that the Legislature will do nothing that is hostile to local education.

Mr. LOMASNEY: If it does not do anything why should we pass it?

Mr. POWERS: The reason for that is this: It does not affect the present situation, but it leaves the Legislature free to determine what conditions may be imposed upon State appropriations.

Mr. LOMASNEY: Does it not allow the Legislature to give the Board of Education control over these total expenditures of the money given by the State, and supervise it, and absolutely control the school-committee in the different districts of this State?

Mr. POWERS: I cannot agree to that proposition. I do not think it does that.

Mr. LOMASNEY: I should like to ask the meaning of these words: " . . . or of such State authorities as the Legislature may direct."

Mr. POWERS: That has reference to State appropriations and not to local appropriations. That is the purpose of the amendment: That the Legislature may impose conditions as to the manner in which moneys appropriated by the Legislature for local aid may be expended. And it would be a very remarkable proposition, Mr. President, if the State were not to have control over its own appropriations, which it makes for the benefit of a local community.

Mr. CUMMINGS of Fall River: I desire to call the attention of the Convention to a question which fairly arises from this resolution and which thus far has not been discussed. That question relates to the authority of the Legislature in the future to exempt religious, educational and charitable institutions from taxation. At present those institutions are exempt, and there is constitutional authority for the Legislature making the exemption; but if this amendment is adopted by the people I doubt very much, without pretending to answer the question and speaking under correction, whether there will be any longer authority in the Legislature to exempt these institutions from

taxation. I ask the attention of the Convention, especially of the lawyers, but also of every member, to the opinion of the Justices of the Supreme Judicial Court upon a question of taxation which was referred to them by the Senate, in 1908, and to which, among other things, they made this answer; and I hold it of so much importance that I believe it is a duty to bring to the attention of the Convention what the Justices replied. Speaking of taxation in general, they said (195 Mass. 608):

> There are other provisions under which the Legislature has acted, relative to particular subjects which involve taxation or exemption from taxation. The third article of the Declaration of Rights, and Article XI of the amendments which was substituted for it, recognize the importance of the public worship of God, and of instruction in piety, religion and morality, as promoting the happiness and prosperity of a people and the security of a republican government. Accordingly, taxation for these purposes is authorized. As taxation to procure property for such uses is permitted, exemption of property so procured is legitimate, under the special provisions of the Constitution touching this subject. We have also constitutional requirements for the encouragement of literature and science, the diffusion of education among the people, and the promotion of "general benevolence, public and private charity" and other kindred virtues. As taxation of the people may be imposed for these objects, property used for literary, educational, benevolent, charitable or scientific purposes may well be exempted from taxation.

The exemption is based upon this idea, and this idea only, that since taxation may be imposed for the protection and fostering of these institutions, therefore exemption may be allowed, and when taxation may not be imposed to foster and protect these institutions exemptions may not be allowed. When the authority to aid by taxation is gone the right to exempt from taxation is gone.

We should vote upon this matter with our eyes open to this peril; that if we adopt this resolution, — and again I speak hesitatingly, because I have not had the opportunity to consider the matter so fully as I should wish, — if this resolution is adopted we expose these institutions to taxation because we take away the excuses for exemption, that they are to be protected, fostered and aided by the Commonwealth. I may say that the opinion of our late colleague, Attorney-General Malone, was to the same effect. There was the authority to aid these institutions, and that authority to tax to aid them was also the authority to exempt. Now, let us not act blindly, but know that if we pass this resolution we are exposing these institutions to taxation.

Mr. President, if this resolution is to be submitted to the people, — and the signs are unmistakable that it will be submitted, — it should be offered to them in its least objectionable form. Therefore, I urge the proposal of the committee on Form and Phraseology, striking out the eighteenth amendment. I attempted, perhaps imperfectly, to tell the Convention that the reënactment of that amendment was not necessary, — that amendment which is irritating to a body of people who are discontented, but are not clamorous, not protesting, not remonstrating. The Catholic people are not doing any of those things. They are not here causing any confusion by protests or petitions. In the multitude of petitions which were handed in by the churches, religious conferences and ministerial meetings in support of this resolution, I wish you to remember that there was not one that came from a Catholic conference or a Catholic church. The Catholics refuse to take responsibility, and will refuse to take it, for this resolution,

and for anything that comes out of it. If these institutions which have been aided in the past are to be denied aid in the future, let no man stand up and say that it was because of Catholic petitions or Catholic remonstrances. There is no amendment sectarian or anti-sectarian offered by the Catholics.

That reminds me, too, of the remarks of the gentleman from Waltham (Mr. Webster) that some of us, who wanted to stay where we find ourselves under the Constitution, were extremists, and that he and his friends were taking the middle of the road. Well, it is a small matter, — the characterization of our position, — whether you call us extremists or not; but it is an extraordinary statement to make, that the men who are content with the provisions of the Constitution as they have existed for a hundred and thirty-seven years are extremists, and the men who call upon us to pass the most drastic constitutional amendment that ever has been offered, — I do not think its like is found in any State, — are the middle-of-the-road men. The men who deny all aid to private institutions might well be characterized as the extremists, if the characterization meant anything.

Again, I urge on the Convention to accept the amendment to the resolution relative to the grants of public money to the Worcester Polytechnic Institute and to the Massachusetts Institute of Technology. Whether the State is under a legal obligation and a just obligation, — and our court has decided that it will recognize no other, — or a moral obligation, or a political obligation, there is an obligation in honor, and Massachusetts should not repudiate her honor. When the State says to trustees: "If you go out and raise a million dollars, and if you go out and raise half a million dollars, and if you grant us so many scholarships, the Legislature will make you annual appropriations of a fixed amount for ten years," and the trustees do it, and then we withdraw the promise made by the State, it makes a man believe that the Convention is obsessed. It is not creditable to the State to do that, and the value of this resolution, if it otherwise has any value, will not be impaired by respecting an obligation that in honor Massachusetts is bound to respect.

I believe also that the amendment offered by the gentleman from Quincy (Mr. Blackmur), giving us the right to use private hospitals and to aid them, should be accepted, and, again, the acceptance of this amendment will not impair the usefulness of this resolution, if otherwise it is valuable.

Mr. President, the gentleman from Northampton (Mr. Feiker) asked a pertinent question which should be answered before we vote, and which has not been answered. He asked if anybody claimed that, in all the appropriations for one hundred and odd years which have been made to private institutions, ostensibly not for the private institutions' sake but for the sake of the Commonwealth, any part had been misappropriated, any part had been misapplied, or that the appropriations had not brought back fruits a thousandfold; and no one has made that claim. The gentleman's question remains unanswered, and it may be taken for granted that there is no answer other than the one he indicated when he asked the question, — that Massachusetts must acknowledge the public service rendered by these institutions and their honest administration of public funds.

Why then are we taking this course if that is true? The gentleman

from Ware (Mr. Sawyer) said, and if I misquote him I ask to be corrected: "We may as well admit that the anti-sectarian amendment is aimed at the Catholic Church." It is true this is not the original anti-sectarian resolution, but it also is true that the gentleman from Newton (Mr. Anderson), who introduced the anti-sectarian resolution, said in the course of his argument that there were a hundred thousand minute-men who stood to advocate and advance his amendment. He told us that if we did not take this amendment he would give us the anti-sectarian amendment; and that, even though the Catholics supported this amendment at the polls, if it was defeated we must take the other, — he would give us the other, — and you sat here and applauded. Are we taking it because we are afraid of the threat?

I am not here asking for aid for religious institutions. I do not want the State tied up with any church. I am not here asking for aid for the teaching of religion in any school. I do not want the State money spent to teach creed or doctrine. I stand just where you stand who are the most ardent champions of the separation of church and State, and I want to be counted with you in that separation; but when the gentleman from Newton (Mr. Anderson) told us what a benefit it was to the church in France that the Concordat had been repealed, that the contract which was made in reparation for the spoliation and confiscation of church property had been cancelled and repealed, and that the church benefited by the repeal, you applauded that too. The repeal of the Concordat was not intended to help the church, it was a part of the policy of persecution of the church, adopted and mercilessly carried out by the government of France and intended to destroy religion, but it failed. It would have been better to tell the whole story. France is our ally, and we honor her for her superb and glorious defence of human liberty. She is our ally, and I would not say one word to throw a shadow upon her glory, — not a word. But tell the whole truth. It is no discovery that the gentleman made, that religion prospers under persecution. No matter whose religion, Catholic or Protestant or Jew, it never was in the power of violence, of human violence, to bayonet a man's faith. You cannot stamp faith out that way. What men honestly believe, God Almighty protects from the violence of men; persecution cannot destroy it; and it is a saying as old as religion itself, as old as the church in any event, that the blood of the martyrs is the seed of the church. It is no discovery that religion prospered under persecution. But tell what it was that was done. It was not simply the repeal of the Concordat, or the taking out of the Bible from public institutions. It was the horrible, the blasphemous boast of the Minister of Education that the government had driven out the Divine Founder of Christianity from the hospitals, from schools, from military camps, from the courts, and that it would drive Him out of France. It was the confiscation of church estates, the banishment of the religious, the blotting out of the name of God from the children's school-books, all these things combined, that aroused the faith of France and brought back religion in all its fullness and in all its strength. The church will not suffer, religion will not suffer from persecution; religion will be protected. I therefore ask this Convention, which applauded an act that was a part of the persecution, to ask itself this question: When until now, and where

excepting in this hall, did we ever hear persecution justified because it failed? That is exactly what we have heard.

Do not accept this resolution with the assurance that the question is settled. It is not settled here. Whatever assurance the Convention may have from the committee, and I admit it has a right to take cognizance of the committee's unanimous report, that this resolution when it is submitted to the people will be adopted without conflict, I wish to tell you that it is not so. I do not know about this immediate section, and I may not speak for it. I have the right to say something for the diocese in which I live; I think I have the right to say something about the diocese of Springfield; and I believe that the people in those dioceses, — the Catholic people, — will resent the passage of this resolution.

There is just one word more and I am through. This is a painful subject. I wish I might have escaped speaking of it; frankly, I have tried to run away from it; but in conscience I could not leave this question without telling you what I honestly believed. We have been admonished to help the academies and private institutions. Let me call your attention for a moment, — for a moment only, — to what the fathers have told us. It is the one case in the Constitution, — the one place, — where they have almost commanded us, and the command is to foster these institutions. I am reading from chapter 5, section 2:

> Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them.

That is the admonition, that is the charge, which came down to some of us who inherit the liberties for which these men had fought, and to some of us who are alien, who came here, as Lincoln said, to share, because we were of the human family, the liberties for which others had died. That is the admonition and warning: In all future periods, to cherish and protect the interests of literature, of the sciences and of seminaries of them. What are we doing? Worthy institutions are being rejected, as if there was something bad about them. It was claimed with reference to one of them that it was sectarian, or it was suggested that it was sectarian, because the Scriptures were read and a hymn was sung. Well, I hope the day is far distant when it will be an offence to read the Bible or an offence to sing a hymn in praise of God. I do not believe that Deerfield Academy is open to the objection that it is sectarian.

Mr. President, I have no vain hopes of changing the result in this Convention, for it is written, as the gentleman from Lowell (Mr. Daly) said, so plainly that the blindest of us must see that this Convention will accept this resolution. I know it is adopted in a spirit of peacemaking; but I wish to remind the Convention that there is such a thing as making peace at too great a cost. Eighty years ago, when anti-slavery petitions were presented to Congress and the southern slaveholders were opposing the reception of the petitions, Massachusetts was advised to give up the right of petition for the sake of peace,

and, I regret to say, for a time she yielded, but she soon redeemed herself. No man has shown why we should now surrender our rights, and this resolution is a humiliating surrender, for it represents the concession that fear makes to intolerance. [Applause.]

Mr. DONOVAN of Lawrence: It is not without considerable deliberation and also with some trepidation, after hearing the sages and statesmen who surround me, that I take the floor to explain to you why I shall vote against this amendment, — against all these amendments, — and against the resolution offered by this committee. In Massachusetts to-day a couple of technical schools, a few hospitals and some academies are being aided by public funds. There has been no outcry from people who believe in and who praise and who admire the Massachusetts Institute of Technology and the Worcester Polytechnic Institute. The various academies and hospitals that are aided, — there has been no cry against them; in fact, there has been all praise for them, and there should be. There is no reason why any of these hospitals, these academies, these technical schools, that are doing good, should not be aided if they need aid. Therefore let us tear the mask from this thing, gentlemen, and get down to what it means and why it is in here.

Is it not, then, this, — that there is fear that there will be a call in this classic hall for money to pay for the support of parochial schools and the maintenance of Catholic churches? I am a Catholic layman, but I represent no body, I speak for no one but myself when I take this floor; but I ask you to remember this, — that if I sound a discordant note, it is sounded in absolute sincerity.

I have listened to all this argument, and I have had personal experience, because I am a graduate of a parochial school, a graduate of a public high school, a student in an evening public school, and a graduate of two large Protestant universities of this State, — I refer to Harvard University and Boston University, — so I feel that I have been through all sorts of schools.

Now, what does it mean? It means that there is a fear that money will be appropriated for parochial schools and for Catholic churches. Twenty years ago the Catholics were much poorer in Massachusetts than they are to-day; ten years ago they were much poorer than they are to-day. I should say offhand that they are better off to-day than they ever were in Massachusetts. And what are they doing? Without asking one single, solitary cent from the Commonwealth of Massachusetts for parochial schools or for Catholic churches, in this State to-day there are 588 Catholic churches, 202 parochial schools, 1,324 Catholic priests, 117,000 pupils in the parochial schools of Massachusetts, and all supported by the Catholic people themselves without asking a cent from the Commonwealth of Massachusetts, and I hope the day never will come when they will ask for a cent from the Commonwealth of Massachusetts. [Applause.]

I tell you, gentlemen, there is no need of this measure. It is fostered and engendered by people who have an innate jealous fear in their souls. There is no need for this measure, no need whatsoever. The Catholics never asked for it. They have not asked for it up to to-day, when they are better off than they ever were, and there is no reason to believe that they ever will ask for it in the future.

Now, then, what would be some of these results from this measure? I think that the point taken by the gentleman from Fall River (Mr. Cummings) is an excellent one. There is fear that if you pass this measure you cannot exempt the churches and schools from taxation. What is the result? Not only do Catholic churches and schools come under this, but Harvard University comes under it, with its $26,000,000, and I should not want to see Harvard burdened any more than it is burdened now. The Old South Church, probably worth $2,000,000, on Washington Street, comes under this for taxation. So it hits everybody. It hits all denominations. It hits everything that is exempted now, and I think that that point is well taken. Why should we let this innate fear, this jealousy on the part of certain people in our community, plunge us into a maelstrom of trouble by passing such a measure?

Gentlemen, there is another thing to consider. It says in this measure that we shall not aid, maintain, etc., in the language of the resolution, any institution not under public control. Does this ever occur to you, — that you could not buy produce from institutions that are under sectarian control? Did this ever occur to you? For instance, St. John's preparatory school in Danvers is situated very near the Danvers Insane Asylum. If this ever should occur, think what a curious, comical situation it would be, — that if St. John's preparatory school should raise five hundred bushels of potatoes on its farm, and be able to use only fifty of them, it could not sell those to the Danvers Insane Asylum because they would be Catholic potatoes. That situation may arise, because if there is any profit on those you could not aid or maintain any institution under sectarian control.

Gentlemen, there is also this to consider. The hospitals and institutions in this State that are doing good work should not be cut off. The Boston City Hospital should not be cut off from the appropriation that it is getting to-day. None of these institutions should be cut off because of this measure that is aimed perniciously at something that there is no reason for it to be aimed at. Another thing I tell the advocates of the initiative and referendum is this: That if this measure is submitted to the people it will be argued from the conservative standpoint that it is aimed at the Catholic people, and an effort will be made to induce people to vote against both amendments. We are in a time of war, gentlemen. Four men are leaving this Convention for Plattsburg at the end of this week. There are thirty-six others of us who are under this draft, who may be called at any moment. I tell you that it is no time to inject religious strife. It is not simply in my own city where a great many of them are ready to vote against this legislation; they feel it is a gratuitous insult to the Catholic people of this State. I tell you, gentlemen, to vote down this resolution; there is no need for it, and it is simply kept along and engendered by a spirit that long ago should have died in the Commonwealth of Massachusetts. [Applause.]

Mr. William H. Sullivan of Boston: Though a member of the committee, I have carefully restrained myself from saying anything, in the hope that we should reach a vote some time ago. Some days ago, perhaps some months ago, in the Committee of the Whole, we passed unanimously this proposition. Now we are asked to change our conclusion, sitting in Convention, and we have heard various argu-

ments, but the principal argument is that there is a moral obligation to make various payments of money to different institutions; the Committee of the Whole at the time it passed this amendment knew then of this so-called moral obligation, and let me say that in the Bill of Rights Committee there were many men who considered this moral obligation.

Now, in the ten minutes that I have to speak I cannot hope to say all I had hoped to say, and I am not going to ask for any extra time because there are a number who want to speak. Very briefly and very hurriedly, let me give a brief résumé of what has been said.

The gentleman from Fall River (Mr. Cummings) opposed the amendment the other day, and was the only one practically who did oppose it; to-day he opposes it, and to-day he brings in a new argument, — that under the Constitution we cannot exempt churches and schools from taxation, if we pass this measure. It is true, he says that he expressed that opinion with some hesitation. What is his solution? Why, he says it can be solved by substituting the resolution of the committee on Form and Phraseology; but if you read that resolution it is the same thing as this one. It has the same wording, it prohibits any and all appropriations. Now, the committee on Bill of Rights discussed that matter of tax exemption. They came to the conclusion, and every lawyer will come to the same conclusion, that there is nothing in the phraseology of this amendment to forbid the State to exempt churches and public institutions from taxation.

The revered ex-Governor from Arlington (Mr. Brackett) has said, in favor of the appropriation for the Massachusetts Institute of Technology, that we ought to encourage education, that the south is outstripping us in manufactures, etc. I have not time to go into all his argument. But one gentleman from Lawrence, another one from Lowell, — and this also answers the gentleman from Lowell who pleaded for the textile schools the other day, and also answers the gentleman from Fall River, — two men came before us, one of them a delegate in this Convention from Lowell, and objected to any further appropriation for the Lowell Textile School because the money was misappropriated, because the schools were for the benefit of the mill owners, and because the men who got their education there at the expense of the State went south to build up the industries of the south. The beloved ex-Governor suggested that we ought to educate our young men in industry to compete with the south and I agree with him; if he would make an amendment that all the recipients of scholarships at the Worcester Polytechnic Institute and the Institute of Technology be compelled to remain here in Massachusetts, where they received their education, to build up our industries, then we might get results. The gentleman from Milton (Mr. Bryant) spoke about the moral obligation, — a moral obligation on the part of the Commonwealth of Massachusetts to subscribe to the Worcester Polytechnic Institute and the Massachusetts Institute of Technology. Who made the contract, if there was a contract? It was the Legislature, and it never was ratified by the people of Massachusetts, it never was ratified by my people, and as their representative in the Legislature I voted against the Worcester Polytechnic appropriation. In the testimony that we heard before our committee there was not one word about the need of this appropriation, there is no financial need of it;

and yet they demand the pound of flesh. The gentleman from Boston (Mr. Lomasney) has well said: "Let them stick to their contract," — these men who speak about the moral obligation. Look at the phraseology of the amendment they suggest. It is not to ratify what has been done, but it is to compel the State, by a skilfully worded amendment, to continue the payments whether there was a contract or not; they seek to protect this moral obligation in a most immoral way.

Then the revered Justice from Fall River (Mr. Morton) made a wise suggestion, that if there is any obligation, if there is any contract, to permit the State to appropriate moneys to fulfil the legal contract; and they would not accept that suggestion. At that time they thought they could pass the original resolution. Some days ago, in a more subtle and more skilfully worded amendment, the suave and beloved gentleman from Worcester (Mr. Washburn) suggested that the State be permitted to continue appropriations for scholarships; and at that time, with the same moral obligation staring us in the face, we voted unanimously against it. Now, they ought to receive no fruit of this compromise.

Then take the gentleman in favor of the Deerfield Academy (Mr. Boyden). We listened to the testimony that was adduced by him. Before he went to Deerfield there was the same academy, with fourteen pupils, a private institution, run for private profit; and that institution, with fourteen pupils, would be eligible under his amendment to receive assistance from the State; they say these little towns ought to be permitted to save money; and some of the towns perhaps, — not Deerfield, but some of the towns, — might prefer to escape taxation of $2,000 or $3,000 by contributing small sums to a worthless institution rather than have a high school at substantial expense. As the gentleman, the ex-congressman from Newton (Mr. Powers), has well said, to-day there is a standard of public education. Why should these small towns be permitted to escape? The gentleman who favors this resolution has performed well there. He has now over two hundred pupils. But what is going to happen when he leaves? Perhaps his predecessor might come back, and the school will run down to fourteen pupils, and still the town would contribute rather than build a high school.

The gentleman from Quincy (Mr. Blackmur) says, about his private hospital amendment, that the State ought to be allowed to contribute; and so also says the gentleman from Fall River. The latter opposes this measure primarily; he also favors every amendment which will weaken it. Now he says the State ought to be permitted to contribute to private hospitals, which are creatures of the public service corporations to such an extent that it became necessary to curb them, and I introduced a bill, which was passed, that these hospitals should not put into their records, when a man was injured, anything but the medical history of the injury and the medical treatment of the case. Creatures of the corporations! When a man goes to one of these private hospitals, the hospital and the doctors therein immediately become employees of the railroad corporations, and I am strenuously opposed to any appropriation for these hospitals.

Now, as I said before, why should my people in Ward 14 be taxed for the Worcester Polytechnic Institute? What obligation is there

that my people have entered into when I, as their representative, opposed it?

I do not know how long I have spoken, but there is one other thing, perhaps it has nothing to do with this debate, which I say by reason of the remarks of the gentleman from Boston yesterday, when he gave all the credit of that committee work to a few prominent men. Now, I would not take away one iota of the praise that the papers and this Convention have given them, but there are other members on that committee, and as a member of that committee I am going to give very brief testimony here relative to the work performed by them. There was not a chair-warmer on that committee. Everybody did something. On that measure there is some virile thought and much of suggestion from every member of the committee. There is one member, — and I can say this now; at the beginning of our deliberations I thought he would be too narrow to ever compromise or agree to such a measure, — and he is the judge from Cambridge (Mr. Walcott); at one time there were four or five dissenters, and we seemed far apart, but the judge from Cambridge, with a desire to serve his Commonwealth, brought us all together, and we have that resolution. And there were four other dissenters: the majestic appearing lawyer from Gloucester (Mr. Merrill), the judge from Franklin (Mr. Doe), the clergyman from Waltham (Mr. Webster); they all yielded in their desire to help Massachusetts; and the judge from Taunton (Mr. Swig) has made many wise suggestions. And there is one almost unknown, the member from Adams (Mr. Stoeber), a laborer, a workingman, who perhaps made few suggestions and said but little except that from the beginning, when there was no conception of the liberality in this committee, he was fearlessly insistent that something be done to help Massachusetts. And the other gentleman from Boston (Mr. Callahan), whom I never had known personally, the gentleman who sits back of me, was the most tolerant member on the committee. While we all glory in the honors that were given to the gentleman from Boston, and the district attorney (Mr. Pelletier), and would not take one iota from them, we wish to see that every member of the committee receives his due meed.

Mr. Barrett of Cambridge: I wish to refer very briefly to a matter that has not been touched by the preceding speakers, namely, the grants of various cities and towns to the Massachusetts Institute of Technology. Notwithstanding the legal or the moral obligations of the Legislature of 1911, the city that I have the honor to represent in part has donated in an indirect way hundreds of thousands of dollars to the Massachusetts Institute of Technology.

In the first place, Mr. President, our city has exempted from taxation for a number of years the land on which the buildings owned and occupied by the Institute of Technology now stand, doing so in anticipation of having an increase in our tax revenue. The first thing the city knew, through a shrewd real estate concern this land was all bought up for the Institute of Technology, which now has some $9,000,000 of property in Cambridge exempt from taxation.

Now, I do not stand here in favor of the taxation of educational institutions, by any means, though we in our city have some $50,000,000 of property exempt from taxation from an educational standpoint, — entirely college property; but I believe it is unfair, Mr.

President, that our city should be required, whether we have any moral obligations or not, to pay anything extra to the Institute of Technology, or similar institutions, when we already are staggering under a tax rate of $23.50 last year, and our tax rate will be $25 and more this year. In view of the fact that we have seven sectarian schools in our city, taking care of seven thousand children, if the governing power of those schools said to the city of Cambridge tomorrow: "We cannot afford to educate those children any longer, we will allow the city to do it," it would mean the expenditure in buildings alone of some $2,000,000, and it would mean the maintenance of those schools at over $500,000 annually; and that would mean that our city would be driven into bankruptcy. The children, the pupils and the graduates of those schools, are an honor to the Commonwealth of Massachusetts and to the Nation. I could name a hundred of them who are doing their part for the Nation in far-away France. They are the men who are not coming to the exemption boards in order to avoid their honest duty to the Nation with as much strapping and harness on as would subdue a Kentucky mule. They are not men of the type of the Kingdon Goulds and the Noble Fosses, whose personality is so much above the common herd that there is no name in the Christian or Hebrew calendar good enough to distinguish them from ordinary mortals, — who have formed an unholy alliance of mammon, aristocracy and cowardice. I believe, Mr. President, that when those men are returning from the front, we, who are living here in luxury and ease, legislating for them, ought to let them know that they are coming into a State where the laws will be better than when they left us. I believe the time and test are right here now when all this racial difference should be forever driven out of our State.

I have the greatest possible respect, Mr. President, for the men who compose this committee on Bill of Rights, and also for the judgment of the presiding officer who selected them. I question if there is a legislative assembly in this Nation that could get together fifteen men, possessing all these racial differences, religious and political traits so far apart, and come out as one solid man in favor of this resolution. I believe, Mr. President, it is a forerunner of what is going to happen through the States and in our Nation, moulded all in one body.

I am reminded, Mr. President, of the words of one of my favorite poets, written perhaps a century ago, but applicable to present conditions, when he said:

> Shall I ask the brave soldier who fights by my side
> In the cause of mankind, if our creeds do agree?
> Shall I give up the friend I have valued and tried,
> If he kneel not before the same altar with me?
> From the heretic girl of my soul would I fly,
> To seek somewhere else a more orthodox kiss?
> No! perish the hearts and the laws that try
> Truth, valor, or love by a standard like this!

Mr. PARKER of Lancaster: The least suggestion that should fall from the lips of my honored colleague, the delegate from Fall River (Mr. Cummings), sitting in this division, and intended to guide the deliberations of this Convention, ought to, and would and does, fall upon respectful, attending and receptive ears. Instantly my anxious attention was arrested when he suggested this morning the new and

somewhat menacing proposition that the adoption of the resolution proposed by the committee on Bill of Rights would endanger the safety of the ancient charitable and educational institutions of this Commonwealth by removing their present immunity from taxation.

Mr. President, if my honored friend, speaking with the authority that attaches to his every word interpretative of our law, had declared that it was his deliberate opinion that the adoption of this resolution would put in jeopardy these worthy institutions, I should have gravely hesitated before I dared even make inquiry with respect to the authority of that opinion. But my friend speaks always conscious of the grave responsibility that attends his words, and he has not said to us that it is his opinion that this perhaps disastrous removal of exemption from taxation would befall these institutions. I therefore venture to make inquiry, I therefore venture to suggest, upon principles of reason, though I have not reviewed the language of the opinions of the court to which he has referred, and so I would say in the modest phrase of inquiry rather than of dogmatic or of authoritative statement, that I have supposed, and believe it to be true, that the immunity from taxation afforded and extended to charitable and educational institutions established in this Commonwealth, is extended, in part compensation, in part in grateful recognition of the public service that these institutions so graciously, benevolently, philanthropically and constantly perform. And, sir, I believe it to be a principle of law, as it is a principle of justice, that so long as these institutions do discharge these high and beneficent services, the consideration of the State will extend to them in matters of taxation in recognition of this service performed and to be performed. I cannot believe, sir, because a source of income may be denied to or withdrawn from any of these institutions, the State will thereupon immediately visit upon these beneficent organizations, serving for the welfare of the State, additional burdens.

Let us not then shrink from the duty manifestly resting upon us to deal directly with the wise measure which the committee has reported to us, through phantom fears of evils that I myself, Mr. President, do not believe to be imminent, or evils that will not befall; because this State never will repudiate an obligation that it owes to man or institution so long as the service for which that compensation is to be paid shall be rendered to the Commonwealth. Let us not be diverted by the confusion of apprehensive fears. And until my honorable friend shall say, with the responsibility that attaches to his words, that this evil consequence of a removed exemption from taxation will inevitably fall upon these institutions, I shall stand for a principle that I believe to be immutable because it is just, and I believe that this high service of these institutions will go on and it will be recognized by the Commonwealth.

But, sir, to the end that the principle set forth in the resolution reported to us by the committee may be sustained, uncontaminated, unaffected, by all lesser considerations, I would accept the resolution as proposed by the committee, already evidently approved by this Convention, even though some incident of burdens of taxation might result; for I know well that the people of this Commonwealth, whether acting through their Legislature or acting as individuals, are animated by a common conscience, and a common high purpose to

see to it, by whatever adjustment may be necessary to be made, that these institutions shall be preserved.

And, sir, one word with respect to the resolution itself. Already, from all sides and from all opinions in this Convention, words of high praise have been given deservedly to this committee for the conscience and courage it has displayed. Its purpose is, sir, that all interests, material or financial, all the solicitations of zealous or filial devotion to this or that institution, all temporal temptations, all temporal and financial favors, shall be kept far away from contaminating the perpetual security of this great principle, the preservation of the religious faith of our people, and its absolute separation from all solicitations, attritions and activities, either collective or individual in their character. And, sir, that forever it may be kept above those conflicts, above those asperities of ambition, of passion or of prejudice, let the principle of our religious faith, the absolute inviolability of its observance, be committed, as this committee has wisely sought to commit it, to the perpetual, safe, just guardianship of a Constitutional provision. [Applause.]

Mr. ANDERSON of Brookline: I regret that there is a feeling here that those who are not in favor of the committee report, or who are in favor of some of the amendments, should not be given even a ten-minute period in which to express themselves. I shall take less than that time. I have listened to the debate in the hope that the many members of this Convention for whose judgment I have great respect, in whose sincerity I have absolute belief, would convince me that the principle underlying this amendment is right and sound, and that desirable results may accrue to the Commonwealth from the enactment of this amendment to the Constitution. If I had been enabled otherwise to follow their judgment instead of my own, I should have been compelled to retrace my steps by the argument and the statement of the gentleman from Fall River (Mr. Cummings). Perhaps no two men view questions of creed and of religious conviction from more different points of view than he and I. He is a believer in the Catholic church. I am a Protestant of the Protestants, an attendant of the Unitarian church. But I believe he is profoundly right when he says that this proposed amendment is wrong in principle and will be found harmful in operation.

Let us look for a minute at what the facts are. The facts are that our ancestors came over here, not to found a Commonwealth free for religion, but to found a Protestant evangelical theocracy, and my ancestors were then in the dominant class. And we all were brought up under the theory, in many parts of New England, that the taxing power should be used for the benefit of the Protestant evangelical church. In substance, the Constitution of 1780, that social compact so cherished by the learned gentleman from Southborough (Mr. Choate), provided that the Protestant Congregational Evangelical Church should be the established church of Massachusetts. We have gotten away from it gradually, moving toward what I believe to be sound principle; that sound principle is that there shall be no public money devoted, directly or indirectly, to or for the benefit of any sectarian or religious purpose. The principle which underlies this amendment is that there shall be no public money devoted to any educational purpose which is not under absolute State control. I have yet

to learn that educational purposes are "private purposes," as was argued by one of the delegates from Boston. I know of no "public purpose" which is more important for the welfare of the Commonwealth of Massachusetts than education. I cannot subscribe to the proposition that the devotion of public money to an absolutely non-sectarian, — if you choose, non-religious, — educational institution is the devotion of public money to any other than a most fundamentally important "public purpose." On that ground I must stand.

I should be glad to vote for an amendment based upon the principle I have just stated, if, indeed, it be necessary to have any amendment.

Now, Mr. President, this is not a new question to me. I had six years' experience of it in the Boston school-committee a good many years ago; and then I adhered to the principles which I thought were sound. At one period I was denounced as an A. P. A., at another period I was denounced as a pro-Catholic; I have had the feeling, being denounced by both of the extremists, that I had somehow or other found and kept the middle of the road.

One word more and I have finished. I do not *believe* the resolves under which appropriations are being made for the two Institutes of Technology are contracts which the courts can enforce. I think I *know* that they are *obligations* binding in honor and in interest upon the Commonwealth of Massachusetts. I hope that if this amendment is submitted otherwise to the people for its acceptance that the amendments permitting appropriations of money to the Massachusetts Institute of Technology will be made a part thereof. I hope that the amendment proposed by the gentleman from Deerfield (Mr. Boyden) will also be adopted. There can be no doubt that it is in the interest of several of the poorer towns of the Commonwealth to allow them to utilize private funds which have been given for academies. Therefore I shall vote for those amendments, and I shall vote against the entire proposition. For, I repeat, this resolution is unsound in principle, and if adopted will be found harmful to the peace, the quiet and to the religious freedom of the people of this Commonwealth. [Applause.]

Mr. Broderick of Waltham: I hope that the amendment as reported by the committee will be adopted. It does not meet my approval in every particular, but no doubt it is the best possible solution of the question. I do not believe, however, that it will accomplish all that many hope it may accomplish, which is that it will eliminate from the minds of our citizens all religious feelings in the consideration of public questions and of candidates for public office. That result, in my judgment, cannot be accomplished by legislation, though its harmful effects might be reduced if it were made unlawful to urge publicly or privately the defeat of any candidate by appeals to religious prejudice. It can best be brought about by education, by inculcating into the minds of men the great principles enunciated in the Declaration of Independence and in the Constitution of the United States. It is a disturbing tendency that ought to be discountenanced because it contravenes the application and effect of those principles which alone should guide every citizen in his civil conduct and action.

But in the consideration of the subject-matter of this resolution we

should recognize at all times the good that religion has done in the State, in the Nation and throughout the world. Certainly, we should not embody in our Constitution any provision that would be offensive to religion. If we are to prohibit by constitutional provision the appropriation of public money for private institutions that are under religious control, then we should include in the prohibition non-religious institutions. To do otherwise would be to declare that religion is an evil which taints any institution that may encourage its teachings.

I do not favor this amendment on the principle of the separation of church and State. These great institutions, the one religious and the other governmental, while they move in a sphere distinct and separate, are not rivals, and their relations always should be harmonious and friendly. And it should be deemed a proper subject for consideration, to what degree, in order to promote the general welfare, they may coöperate without encroaching on the well-defined and definite functions of either. Surely in this awful moment of strife which threatens to exterminate the human race, the church and the State may and ought to coöperate to find and apply some remedy to relieve suffering humanity.

I am in favor of this amendment on the principle that the taking of the money of one individual or group of individuals to give it to others is unjust and an abuse of the taxing power. Second only to the power to take the life and liberty of the individual is the power to take the property of the individual without compensation. The exercise of that power is excusable and justifiable only when the property taken has been unlawfully acquired or is unlawfully held, or when it is indispensable to meet the legitimate expense incident to the administration of government.

This amendment is intended to prohibit such taking and I hope therefore that it will be adopted by the Convention in the form in which it has been reported by the committee.

Mr. Edwin U. Curtis of Boston: In bringing to a close this debate which has continued now for many days, I wish to call to the attention of the Convention several especially pertinent questions.

First, about the question of taxation.

In answer to inquiries, it might be well to say that the taxation of church, charitable and educational property or enterprises is not involved in our proposal, and is furthest from the intention of the committee. Special pains have been taken with the wording in order to avoid any disturbance of the *status quo* on this subject.

That statement, gentlemen, was prepared by the committee.

The gentleman from Fall River (Mr. Cummings) argues that if we take away the power to aid educational institutions by money raised by taxation, we may lose our power to exempt them from taxation. But we now have power to exempt churches from taxation, although we have no power to aid them with money raised by taxation.

I think, gentlemen, that answers his argument.

Now, if the Convention will remember, in the opening statement which I made for the committee I said that in the Convention of 1853 the colleges and institutions of higher learning and academies defeated what was intended to be done and what was attempted to be done in that Convention; and, gentlemen, I said that same attempt will be made here; and I ask you to look at the 22 amendments

offered to this resolution. What is the object? I am not a trained legislator; I am serving my first time in a legislative body. But I have been told that one way to kill a bill in the Legislature, and to kill a resolution in this Convention, is to load it down with amendments. And if this resolution is not loaded down, I will leave it to any legislator here if he ever saw one loaded down more heavily with amendments, each one of which has been offered by some delegate with a view to helping an individual scheme of his own.

Now I come to the gentleman from Fall River (Mr. Cummings), and I again call attention to what I said in the opening days of this argument, — that there was no need to inject feeling here, no need to inject religion; and, gentlemen, has any man of our committee injected it?

And how is that committee made up? There are five Congregationalists, four Catholics, two Episcopalians, one Universalist, one Baptist, one Jew and one Agnostic. If that is not a fair committee from which to get a fair result in this Convention, I should like to know how one can be appointed.

Now, gentlemen, at the last minute of this discussion, or the last day, the gentleman from Fall River (Mr. Cummings) rises here and throws in a new matter. He does it like a trained and skilled lawyer. You notice that he addressed you as Gentlemen of the Jury. That is what is in his mind, namely, at the last minute to turn this Convention by a jury argument.

I want also to say about the gentleman from Fall River that, while he spoke of one thing in particular, he then favored every single amendment. Why? Because if he could get one in he knows the measure will be defeated. He says that in its present form it would not be accepted at the polls. I do not know whether his judgment is better than mine or not, or better than other men here who have had some political experience. But in the last two months, — and I know people of every denomination and every walk of life in this city, — no man has approached me who said that; but many men have come to me and said that we have got the true solution of this difficulty. Therefore I say my judgment on that point may be just as good as his.

Gentlemen, I want to say that the committee, with all their fifteen votes, stand united on what I am about to ask the Convention.

On the amendment of Mr. Powers, we ask you to defeat it, to vote "No." The committee on Education, in document No. 309, has taken care of that matter.

The amendments of Mr. Anderson, all of them, were accepted by the committee. We ask you to pass them, to vote "Yes." On Mr. Blackmur's amendment we ask you to vote "No." I have not time to give the reasons; they have all been talked out here. On Mr. Anderson's again, the committee ask you to vote "Yes." On Mr. Lomasney's amendment to vote "Yes." Again, we ask you to vote "No" on Mr. Blackmur's. On my own amendment, which is simply putting in the correct words, we ask you to vote "Yes."

Now we come to Mr. Morton of Fall River. On the Institute of Technology question I have talked with many eminent lawyers, men who are sitting in this Convention, whose names I will not quote, who say, and agree with me, that the Commonwealth of Massachusetts

made a contract, — that the Massachusetts Institute of Technology agreed to give certain free scholarships, and the Institute also agreed to raise a certain amount of money. Assuming that both of these have been done, and the contract has been accepted, we say it is a good contract. But the gentleman from Fall River came to me and said: "If it is so, and if the Attorney-General says it is so, or the Supreme Judicial Court on a question of the Legislature says it is so, you have provided no way by which the Legislature can make an appropriation." And when I came to look at the resolution I found that he was entirely right, and the object of his amendment is to leave it so, — if you read it in connection with the rest of the resolution you will find that I am right, — that if the Supreme Judicial Court on a question, or if the Attorney-General, says that it is a good contract, with those words in, the Legislature can make an appropriation. Therefore the committee asks you to vote "Yes," on Mr. Morton's amendment.

Mr. Sawyer of Ware: I should like to ask the gentleman in charge of the measure if the wording of the amendment of the gentleman from Fall River ought not to be slightly changed, the word "already" perhaps changed to "entered into prior to January 1st, 1917;" and if the amendment on page 3, moved by Mr. Anderson, be adopted, which I understand the committee to recommend, it will leave over a year between the adoption of the amendment, and throw it into one Legislature, and it might be a bone of contention in that Legislature.

Mr. Curtis: I think I can reply safely, without having time to go into it now, that the amendment is drawn by the former Justice of the Supreme Judicial Court, and I prefer to leave it as it is. As to the amendment of Mr. Sanford Bates of Boston, I understand that Mr. Bates if he had the opportunity would withdraw that, and therefore —

Mr. Bates: I have been waiting for an opportunity to get out of the way of this steam roller, Mr. President, hoping that I could get the floor so that I could withdraw my amendment. I do now ask unanimous consent to withdraw it, having been convinced by the weight of legal opinion in this Convention that it is unnecessary.

Mr. Washburn: Mr. President, in order to avoid confusion and because I am in favor of the amendment offered yesterday by Mr. Bryant of Milton, I ask unanimous consent to withdraw my amendment printed in the calendar. [Applause.]

Mr. Curtis: The next, at the bottom of page 2, is the amendment offered by Mr. Bryant of Milton. The Convention has heard the discussion on that; the committee asks the Convention to vote "No."

The next is the amendment of Mr. Blackmur of Quincy, and on that the committee requests that you vote "No."

On the question of the academies, you have all heard that discussion, and on that amendment the committee would ask the Convention to vote "No."

The same on Mr. Richardson's amendment which follows.

Now, Mr. Chairman and gentlemen, I come to the amendment of Mr. Bartlett of Newburyport. It seemed to me very unfair yesterday that the gentleman from Newburyport should have undertaken to put the gentleman from Newton (Mr. Anderson) into a false position by again moving his original amendment. The gentleman from

Newton had explained to this Convention carefully, honestly, why he had changed his mind. I cannot understand the purpose of a man who comes in at the last day, when the matter of the original so-called Batcheller amendment has been disposed of to all intents and purposes, and again moves it; that is, if he is in good faith with the Convention. It seemed to me that his two suggestions, — the two suggestions offered yesterday by the gentleman from Newburyport,— were not what we call open and fair amendments; they were what I have described to start with, amendments put in here to cloud the issue, to defeat the main purpose of what the committee had tried to do. And so the committee ask you to reject the two amendments of Mr. Bartlett.

Mr. Washburn having withdrawn his amendment, of course there is nothing to be said as to that.

Mr. Anderson of Newton makes a last amendment, which we ask to have passed. We would like to have you vote "Yes" on Mr. Anderson's amendment on page 3.

The committee on Form and Phraseology report a new draft of the amendment, and on that, gentlemen, I want to speak with some care. If you will all take your little book, the Constitution, and look at page 97, you will find on that page the last words of the eighteenth amendment. Of those words I desire to speak. The last words are: ". . . and such moneys shall never be appropriated to any religious sect for the maintenance exclusively of its own schools." If the amendment of the committee on Form and Phraseology prevails the whole eighteenth amendment as it stands now will continue to stand, and what will be submitted to the people if this Convention passes this committee's report will commence with "No grant shall be made."

Now, gentlemen, I want to try to show you, without criticizing the committee on Form and Phraseology, admitting they have done good work, that perhaps they do not know as much about the main question as our committee. So what I say is not a criticism, but an attempt at explanation. The committee on Bill of Rights objects to the division of the amendment leaving the present Article XVIII of the Bill of Rights as at present and making a new amendment to the Bill of Rights numbered 45, as recommended by the committee on Form and Phraseology on pages 8 and 9 of document No. 347.

The first objection of the committee on Bill of Rights is that its amendment covers all institutions and undertakings of whatever nature which are not of a purely public character. Schools and colleges are but one of several species of the same family. These are mentioned among other institutions in all the drafts which were submitted to the committee. So far as educational institutions are concerned, they naturally group themselves with schools in the eighteenth amendment. If the question were only of where and how to insert an amendment covering this particular class of institutions no one would hesitate to say that the eighteenth amendment was the place. The common schools are there dealt with, and it was suggested in the Convention of 1853 that higher educational institutions should be dealt with in the same connection. But in principle, schools and educational institutions cannot be divorced from all other institutions, so far as the object of the committee's amendment is concerned. Why then make two bites of a cherry? Your committee were of the opinion

that as the underlying principle involved not only public schools which the Convention of 1853 acted upon, not only colleges and higher educational institutions which the Convention of 1853 avoided, but all other classes of institutions, educational or otherwise, consistency and logic dictated that they be grouped together; that this Convention should start where the Convention of 1853 left off, and extend and perfect in a logical manner what that Convention left incomplete and imperfect.

The second objection to a division of the amendment arises out of the last clause in the eighteenth amendment, which is as follows: ". . . and such moneys shall never be appropriated to any religious sect for the maintenance, exclusively, of its own schools."

Apparently just what these words meant was not known to some of the members of the Convention of 1853. For example, Mr. Hallett of Wilbraham considered the amendment established an ecclesiastical tribune. It declared that money raised for the support of schools never should be appropriated to any religious sect *for the exclusive* maintenance of its own schools. Now what is a *religious sect?* What is a maintenance *exclusively* of the schools of a religious sect? Who is to determine whether or not the town's money has been appropriated to any religious sect? *Anything less than a whole is not exclusive.* "Therefore," said Mr. Hallett, "you may apply your money to a sectarian school all *but.* Any exception will save it."

The words may mean that, for example, an appropriation can be made to an academy of which all the trustees are Congregationalists, provided the doctrine of that sect is not taught therein and it is open to scholars of all denominations; as in that case the appropriation may not be for the "exclusive maintenance of that religious sect." If that is what it means the committee on Bill of Rights do not feel that the words should remain and have omitted them to avoid such an interpretation.

To me it is not entirely clear what the author of the last clause in the eighteenth amendment intended to accomplish by it, but out of the uncertainty and doubt which his language creates in the mind one thought stands out persistently and clearly, that he sought to give some expression to the very same idea which is covered in all its phases and in explicit terms in the first part of the amendment of your committee, namely, that no public money should be appropriated to any school or institution wherein any denominational doctrine is inculcated. It is unnecessary to consider how far or how imperfectly the last clause of the eighteenth amendment developed this idea. It is sufficient that your committee's amendment carries out every idea contained in the last clause of the eighteenth amendment in language which it is believed admits of no doubt.

The consequence is that if the amendment is separated from the eighteenth amendment as proposed, there will be two provisions in the Constitution covering the same thing, one of them, however, explicit and plain, the other, in the last clause of the eighteenth amendment, being subject to question. The people and posterity would be warranted in considering our work slipshod and careless if we acted on the same subject in a new amendment to the Constitution and left as if by oversight the old provision.

In short, if the present eighteenth amendment stands as recom-

mended by the committee on Form and Phraseology and the amendment recommended by your committee on Bill of Rights becomes Article XLV of the Bill of Rights, the two amendments are in contradiction.

Therefore, gentlemen, the committee ask you to vote "No" on the amendment of the committee on Form and Phraseology.

Mr. President, we listened to Mr. George before the committee. There is no question that some of the things in his resolution are incorporated in ours. We have no criticism to make of him, but we say that possibly he does not know what the meaning is of some of the things he has in his resolution, and possibly the gentleman from Newburyport (Mr. Bartlett), who said he could write it in ten lines, does not know. Take these words in the resolution under discussion:

. . . and no law shall be passed respecting the establishment of religion, or prohibiting the free exercise thereof.

Gentlemen, the committee would have been glad to have put that in. They would have put it in for the gentleman from Newton. Why did they leave it out? They did put in "No law shall be passed prohibiting the free exercise of religion", but refused to put in the first clause: "and no law shall be passed respecting the establishment of religion." We did not want to offer in the future the possibility of some new religious society coming up and asking for a charter and having the Governor of the State veto the bill because it was unconstitutional. The first article of amendment to the Constitution of the United States contains these very words. The first two lines provide:

Congress shall make no law respecting an establishment of religion or prohibiting the free exercise thereof.

It is said that this amendment was written by James Madison of Virginia, a member of the original Federal Constitutional Convention. Afterwards when Mr. Madison was President of the United States he was so fearful of violating the spirit of the first amendment that he refused his assent to a bill incorporating an Episcopal church in Alexandria, and also to a bill reserving a certain parcel of public land in Mississippi for the use of a Baptist church. I have the veto messages here and could read them, but I have not time.[1] That is why we left out those words.

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[1] *Story on the Constitution*, vol. 2, § 1879, note. The veto messages referred to are as follows:

FEBRUARY 21, 1811.

To the House of Representatives of the United States.

Having examined and considered the bill entitled "An Act incorporating the Protestant Episcopal Church in the town of Alexandria, in the District of Columbia," I now return the bill to the House of Representatives, in which it originated, with the following objections:

Because the bill exceeds the rightful authority to which governments are limited by the essential distinction between civil and religious functions, and violates in particular the article of the Constitution of the United States which declares that "Congress shall make no law respecting a religious establishment." The bill enacts into and establishes by law sundry rules and proceedings relative purely to the organization and polity of the church incorporated, and comprehending even the election and removal of the minister of the same, so that no change could be made therein by the particular society or by the general church of which it is a member, and whose authority it recognizes. This particular church, therefore, would so far be a religious establishment by law, a legal force and sanction being given to certain articles in its constitution and administration. Nor can it be considered that the articles thus established are to be taken as the descriptive criteria only of the corporate identity of the society, inasmuch as this identity must depend on other characteristics, as the regulations established are generally unessential and alterable according to the principles and canons by which churches of that denomination govern themselves, and as the injunctions and prohibitions contained in the regulations would be enforced by the penal consequences applicable to a violation of them according to the local law.

Because the bill vests in the said incorporated church an authority to provide for the support of the

That shows, gentlemen, the necessity of care in drawing these amendments. I should not have wanted it said ten years ago that we would not allow the Christian Science Church to incorporate, and if these words had been in the Bill of Rights then I do not believe we could have allowed it.

Now, gentlemen, my time is up. Your committee have labored nearly two months, honestly and conscientiously. We think we have produced something that may be for the good of all the people of the Commonwealth. We have done our duty; we could do no more. The decision is up to you. If you think we are wrong, then on you rests the responsibility if this state goes on and the flames are fanned and fanned and we come to religious agitation and bigotry. Should that time ever come, gentlemen, there are fifteen men sitting in this Convention to whom the finger of scorn cannot point. We shall be free; our status will be fixed. We ask you to fix yourselves as we think we have fixed ourselves. [Applause.]

I give the remainder of my time to Mr. Lomasney.

Mr. LOMASNEY: Section 2 of chapter 438 of the Acts of 1903, the act by which Massachusetts conveyed certain rights it had to the Institute of Technology, begins with these words:

> Subject to the rights, *if any*, of other parties and to the restrictions hereinafter set forth, the Massachusetts Institute of Technology, or its grantees, may erect upon all or any part of said premises, buildings conforming to the building laws of the city of Boston; but no building erected upon the above described premises shall be used for a stable or for any mechanical or manufacturing purposes.

Now the gentleman from Fall River has put the same principle into his amendment: "and to carry out legal obligations, if any, already entered into." I hope the Convention will follow the lead of the honorable gentleman from Fall River (Mr. Morton), who sat here as a lawyer, as a judge, and wrote those words. Do not turn his amendment down for the one submitted by the gentleman from Milton (Mr. Bryant). [Applause.]

The various amendments were disposed of as indicated at the beginning of this chapter and the resolution, as amended, was passed to be engrossed, by a vote of 275 to 25, a call of the yeas and nays having been ordered at the request of Mr. Cummings of Fall River.

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poor and the education of poor children of the same, an authority which, being altogether superfluous if the provision is to be the result of pious charity, would be a precedent for giving to religious societies as such a legal agency in carrying into effect a public and civil duty.

JAMES MADISON.

FEBRUARY 28, 1811.

To the House of Representatives of the United States.

Having examined and considered the bill entitled "An Act for the relief of Richard Tervin, William Coleman, Edwin Lewis, Samuel Mims, Joseph Wilson, and the Baptist Church at Salem Meeting House, in the Mississippi Territory," I now return the same to the House of Representatives, in which it originated, with the following objection:

Because the bill in reserving a certain parcel of land of the United States for the use of said Baptist Church comprises a principle and precedent for the appropriation of funds of the United States for the use and support of religious societies, contrary to the article of the Constitution which declares that "Congress shall make no law respecting a religious establishment."

JAMES MADISON.

—*Messages and Papers of the Presidents, 1789–1897, by James D. Richardson, Vol. 1, pp. 489, 490.*

Debate was resumed Thursday, August 30, when the question of referring the measure to the people was considered after a motion to postpone had been discussed and negatived.

Mr. BRACKETT of Arlington: I dislike to take up the time of the Convention this morning, but as it is the last opportunity that is my excuse for doing so.

I am not opposed to what is called the anti-sectarian amendment. I am in favor of it. But that amendment has been utterly submerged in another proposition. That is not even the title of the resolution before us. This is a "Resolution relative to the support of certain institutions from public funds." We are told that this was changed from the anti-sectarian amendment to its present form as a compromise. Compromises have their place in human affairs. They are sometimes useful. When there is a controversy between business men in regard to property matters they are useful in preventing litigation. They are useful in labor disputes, so as to prevent strikes and the consequent disorder. But when you come to the consideration of governmental principles and policies, I have grave doubt as to the utility of compromises. I think their futility is more obvious than their utility. Before the Civil War, on the slavery question, compromise after compromise was made, but they did not prevent, but simply postponed, the inevitable crisis which came in 1861. I remember once during the war hearing a lecture by Henry Ward Beecher in which he referred to these compromises and said, in his characteristic way: "A compromise is a bombshell with a cushion on it, easy to sit down upon for a temporary rest, but liable at any moment to blow up."

Now, this compromise possibly may obviate an opposition to the original proposition which otherwise would have been encountered, it may secure votes in the Convention which otherwise would be unobtainable; but there is something else to be considered, and that is the action of the people upon this question when it comes up for their ratification; and I believe that the changes which have been made in it, by which the Legislature is prevented from doing many things which hereafter it may be important for it to do, will tend to defeat the proposition.

The gentleman from Boston (Mr. Edwin U. Curtis) in his remarks the other day said that, while he had not been a member of the Legislature, he understood that one way of defeating a measure was to load it down with hostile amendments. But the amendments which were proposed to this resolution were not hostile amendments. They were amendments which would have prevented an opposition which I believe without them it will excite. They were amendments simply to exempt certain institutions from the sweeping character of this proposition. But this main amendment itself, which has changed the whole character of the original proposition from an anti-sectarian amendment to one in relation to the support of certain institutions from public funds, — that amendment, I believe, will prove to be hostile to the final success of this proposition, because of the opposition which it will meet at the polls.

Since we passed this resolution to be engrossed a communication has been received from the Secretary of the State Board of Agriculture, enclosing a resolution adopted by the executive committee of the

board, asking the Convention to exempt agricultural societies, which heretofore have received to some extent support from the Commonwealth, from the provisions of the proposition. If the proposal goes through in its present form you will injure those agricultural organizations, you will impair the agricultural prosperity of Massachusetts and incur the hostility of those especially interested in it. And so, also, there are other matters, about which the same can be said. It is said that this is a great principle which this proposition contains, that is, that the public funds should not be used for any institution which is not under the direct control of the State. In regard to the Massachusetts Institute of Technology and the Worcester Polytechnic Institute, some gentleman said, when the amendment relating to those institutions was before us, that they ought to turn over their property to the State if they wanted any help. But what good would that do to the State? The State could not sell the property, it could not lease it, it could not tax it, but it would have to entirely support those institutions. And so in regard to many other institutions; not private institutions which are working simply for themselves; not institutions into which men put their money for the sake of dividends and income; but institutions which are doing a great work for the Commonwealth, and to the support of which public-spirited citizens contribute with no expectation of pecuniary gain. I do not believe that the State should be precluded from taking action, if hereafter it should deem it for the public welfare to support in part such institutions. I believe that many of these are doing a work which they can do more efficiently than if they were placed under the exclusive charge of the State.

But the members of the committee have abandoned the principle which they proclaim, by including in this proposition an exemption of the Soldiers' Home and of free public libraries. Those were very wise exemptions, — that particularly in regard to the Soldiers' Home was creditable to the heads and to the hearts of the committee. That exception was made because that is a worthy institution, because the men who have there found a home, the men who fought for liberty and the Union in the times that tried men's souls a little over half a century ago, are creditors of the Commonwealth. They should be so regarded. But the proposition to exempt that specific institution does not exempt other similar institutions. How do we know but that hereafter there may be a need, and in the not distant hereafter, for other Soldiers' Homes? The exemption of this institution would confer no authority to help any such homes as these, because it is confined to a single institution now existent. Last week in Boston was held the National encampment of the Grand Army of the Republic, and on Tuesday last the people of Boston witnessed a scene which was thrilling and inspiring. It was the sight of the old veterans of the Civil War marching or riding through our streets, and everywhere receiving the enthusiastic applause and the homage of the people. But, Mr. President, almost daily we see in our streets other men marching, not the war-scarred veterans of the civil war, but men who were born long after the victory at Appomattox, not soldiers of the glorious past but soldiers of the present and the future, which their services for their country will tend to make likewise glorious; men who, in the full vigor of their young manhood, are about to cross the sea to represent Massachusetts upon the battlefields of Europe, fighting, not for American

liberty alone, but for the liberties of mankind. Many of these never will return, and of those who survive many will come back with shattered health, maimed and mutilated, and thereby incapacitated for engaging in the vocations by which livelihoods are earned and fortunes sometimes gained. Soldiers' homes will be needed for them; and do we propose to so emasculate the legislative authority of Massachusetts that when soldiers' homes for them are proposed, and our philanthropic citizens contribute their money to their support, and the Commonwealth is asked to aid in supporting them, as it has for years deservedly aided in the support of the present Soldiers' Home, our legislators will be obliged to reply that while they, and the people whom they represent, are with substantial unanimity in favor of giving this support, yet that the Constitutional Convention of 1917, — in session while the war was raging, its members living at home in comfort and in safety while these soldier sons of ours were suffering and risking their lives abroad, — that this Constitutional Convention has so crippled the Commonwealth that, although the people are united in favor of its doing something to support the establishment of soldiers' homes for these men, the Legislature cannot appropriate a single dollar for that purpose?

Now, Mr. President, I recognize that every member of this Convention is devoted to the duty of the hour; that every man desires to do what he believes to be for the interest of the Commonwealth; but, Mr. President, I do not expect that civic virtue in Massachusetts is to disappear with the final adjournment of this Convention. I expect that the people who sent us here, — and I think we all agree that in our respective constituencies they showed excellent discrimination in making their selection of delegates, — that the men who sent us here will have hereafter the ability and disposition to send men to this chamber, and to the other legislative hall in this building, who will be capable of discriminating and deciding what institutions are doing a noble work and thereby are entitled to partial support from the Commonwealth; that they will be as capable of deciding that as we are to-day capable of deciding in regard to the present Soldiers' Home. For these reasons, Mr. President, not desiring to take up the time of the Convention longer, I shall vote against submitting this proposition to the people. [Applause.]

Mr. Brown of Brockton: I want to be recorded as following in the footsteps of my illustrious predecessor. I took that ground in voting against this resolution in the Committee of the Whole, and I am going to say just how I view this resolution and why I vote against it. I saw coming up to this Convention a narrow proposition, aimed at one religion. I saw it taken in hand by the friends of that religion and carefully conducted inside of the door. I there saw that, in order to pacify bigotry, somebody else was called upon to suffer. As was put by the gentleman from Boston (Mr. Pelletier), it is the case of everybody get something or nobody should get anything. Therefore, because some people projected a narrow issue into this Commonwealth, we, to down the issue, have sacrificed the right of the Legislature to help education in any way it might see fit to help it, to help suffering that may arise from this war. And, furthermore, I found that the very people who are opposed to the initiative and referendum because it limits the power of the Legislature and belittles the Legis-

lature, — those same people are foremost to belittle the Legislature by saying that they no longer are to be trusted with a power that was given to them from the very foundation of the Commonwealth, when they were entrusted with so conducting this Commonwealth that the elements of piety, justice and education, which were necessary for the continuance of the republic, should be maintained. And now we have taken that power.

I myself, sir, vote as I do because I reserve the privilege, if I get the opportunity, any time and every time, to call upon the people to vote against this resolution. I myself believe that if the people of this Commonwealth are called upon to face narrow bigotry which says that a religion that comprises a large part of this Commonwealth is not entitled to respectful consideration they will vote against it. This Commonwealth has not outgrown the narrow spirit evidenced at its very beginning. Then it established a Protestant Commonwealth. The men who were shouting for the natural liberty of man, the right to govern himself and his conscience, — those men fled across the water, came to Massachusetts and the very first thing they did, as the late John D. Long once said, they fell on their knees, and next they fell on the aborigines. They did not stop there. Governor Long was criticized because he characterized them as they should have been characterized because of the great wrong that was done at that time. I do not fear, I say, what may now be the action of this Commonwealth. I should rather have some religion that I do not want than the quantity of no religion at all that we are now getting in this Commonwealth. [Laughter and applause.]

Without further debate, and with only a few negative votes in opposition, the Convention voted to submit the proposed amendment to the people.

The amendment was ratified and adopted by the people Tuesday, November 6, 1917, by a vote of 206,329 to 130,357.

NOTE. — For a continuation of the debate on the sectarian issue see Chapter III.

III.

UNIVERSITIES AND COLLEGES AND THE ENCOURAGEMENT OF LITERATURE.

Messrs. Joseph Michelman of Boston, James E. Maguire of Boston, Isaac Freeman Hall of North Adams and Samuel L. Powers of Newton presented resolutions numbered, respectively, 24, 73, 157 and 158, which were severally referred to the committee on Education. That committee, on the 16th of July, 1917, reported the following new draft (No. 309):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

Instead of Chapter V. of Part the Second of the Constitution, the following modification and amendment thereof is substituted.

CHAPTER V.

THE UNIVERSITIES AND COLLEGES, AND THE ENCOURAGEMENT OF LITERATURE.

Section 1. The Universities and Colleges.

Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, and whereas at various later times to the present day by the generosity of benefactors and the encouragement of the General Court other institutions of higher learning have been established in the Commonwealth, in which universities and colleges many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences which qualified them for public employments, both in church and State: and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, and the great benefit of this and the other United States of America, — it is declared, that the President and Fellows of Harvard College, in their corporate capacity, and the trustees and governing bodies of all the universities, colleges and institutions of higher learning, their successors, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy: and the same are hereby ratified and confirmed unto them forever.

Section 2. The Encouragement of Literature, etc.

Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislature and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences and all seminaries of them; especially the university at Cambridge, all other universities, colleges, and higher institutions of learning, public schools and grammar schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments, among the people. To this end the Legislature shall have power to make such provision by taxation or otherwise as

will, in conjunction with the local agencies and institutions above enumerated, insure a complete and efficient system of education which will afford to every one opportunity for full mental, physical, and moral development, and will aid and encourage all to become unselfish and loyal citizens.

The resolution was rejected.

Mr. Herbert A. Kenny of Boston moved that the resolution be amended in section 2, by striking out, in line 10, the word "higher", and inserting in place thereof the words "all schools and"; and by inserting after the word "towns", in line 12, the words "and cities;".

These amendments were rejected, by a call of the yeas and nays, by a vote of 93 to 165.

Mr. John J. Mansfield of Boston moved that the resolution be amended as follows:

In section 1, by striking out, in lines 1, 2, and 3, the words "our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, and whereas"; by striking out, in line 3, the word "later"; by striking out, in line 5, the word "other"; and by striking out, in lines 14 and 15, the words "the President and Fellows of Harvard College, in their corporate capacity, and".

In section 2, by striking out, in line 2, the word "being", and inserting in place thereof the word "are"; by striking out, in lines 9 and 10, the words "the university at Cambridge,"; by striking out, in line 10, the word "other"; by striking out, in line 11, the word "public", and inserting in place thereof the word "and"; by striking out, in the same line, the words "and grammar schools"; and by inserting before the word "towns", in line 12, the words "cities and".

These amendments were rejected.

Mr. Robert P. Clapp of Lexington moved that the resolution be amended in section 2, by inserting after the word "shall", in the last sentence, the words ", save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution,".

This amendment was adopted, by a vote of 119 to 92.

Mr. John J. Cummings of Fall River moved that the resolution be amended in section 2, by striking out all after the word "enumerated", in the last sentence, and inserting in place thereof the words "promote and encourage the principles of humanity, education, general benevolence and public and private charity."

This amendment was rejected.

Mr. Frederick L. Anderson of Newton moved that the resolution be amended in section 1, by inserting after the word "enjoy", in the last line but one, the words ", save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution,".

This amendment was adopted, by a vote of 143 to 18.

The same gentleman moved that the resolution be amended in section 2, by striking out the last sentence and inserting in place thereof the following:

To this end the Legislature shall have the power to exempt from taxation property used for charitable, educational and religious purposes.

This amendment was withdrawn.

The same gentleman moved that the resolution be amended by striking out the article of amendment and substituting the following:

The Legislature shall continue to have the power to exempt from taxation property used for charitable, benevolent, literary, educational, scientific and religious purposes.

This amendment was adopted, by a call of the yeas and nays, by a vote of 192 to 62.

Mr. Samuel L. Powers of Newton moved that the resolution be amended in section 2, by inserting after the word "otherwise", in the last sentence, the words ", save as otherwise and elsewhere provided in the Constitution,".

This amendment was rejected.

The same gentleman moved that the resolution be amended by adding at the end of section 2 the words:

To this end the Legislature shall have the power to exempt from taxation property used for charitable, benevolent, literary, educational, scientific and religious purposes.

This amendment was adopted, by a vote of 125 to 71.

Mr. David Stoneman of Boston moved that the resolution be amended in section 1, by striking out the word "Christian", and inserting in place thereof the word "all".

This amendment was adopted, by a vote of 168 to 23.

Mr. Arthur H. Wellman of Topsfield moved that the resolution be amended by substituting the following new draft:

Instead of Chapter V of Part the Second of the Constitution, the following modification and amendment thereof is substituted:

CHAPTER V.

THE UNIVERSITIES AND COLLEGES, AND THE ENCOURAGEMENT OF LITERATURE.

Section 1. The Universities and Colleges.

Whereas our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, and whereas at various later times to the present day by the generosity of benefactors and the encouragement of the General Court other institutions of higher learning have been established in the Commonwealth, in which universities and colleges many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences which qualified them for public employments, both in church and State: and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of all religion, and the great benefit of this and the other United States of America, — it is declared, that the President and Fellows of Harvard College, in their corporate capacity, and the trustees and governing bodies of all the universities, colleges and institutions of higher learning, their successors, their officers and servants, shall have, hold, use, exercise and enjoy, all the powers, authorities, rights, liberties, privileges, immunities and franchises, which they now have, or are entitled to have, hold, use, exercise and enjoy, save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution: and the same are hereby ratified and confirmed unto them forever.

Section 2. The Encouragement of Literature, etc.

Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislature and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences and all seminaries of them; especially the university at Cambridge, all other universities, colleges, and higher institutions of learning, public schools and common schools in the towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments, among the people. To this end the Legislature shall, save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution, have power to make such provision by taxation or otherwise as will, in conjunction with the local agencies and institutions above enumerated,

insure a complete and efficient system of education which will afford to every one opportunity for full mental, physical, and moral development, and will aid and encourage all to become unselfish and loyal citizens.

No public money shall be appropriated under the above provisions to any school or institution not under public control.

This amendment was rejected, by a vote of 41 to 138.

Mr. Herbert A. Kenny of Boston moved that the above amendment be amended by striking out the last paragraph.

This amendment was rejected.

Mr. Samuel L. Powers of Newton moved that the resolution be amended by adding at the end of the article of amendment the following:

The Legislature shall have power to pass laws promoting the sound development of the public school system of the State, and to raise money therefor by taxation. No public money, however, shall be appropriated under the above provision to any school or institution not under public control.

This amendment was rejected, by a vote of 66 to 133.

The committee on Form and Phraseology reported that the resolution ought to be adopted as follows:

Resolved, that it is expedient to amend the Constitution by the adoption of the following:

Article of Amendment.

The General Court shall continue to have the power to exempt from taxation property used for charitable, benevolent, literary, educational, scientific or religious purposes.

This amendment was rejected.

A new draft (No. 385) was reported by a special committee June 21, 1918. It was withdrawn Tuesday, July 23, 1918.

THE DEBATE.

The first discussion arose in connection with a motion, Friday, September 28, 1917, to discharge the Committee of the Whole from the consideration of the resolution and assign the latter to the first place in the Orders of the Day for Tuesday, October 2.

Mr. Edwin U. Curtis of Boston: It came to the ears of the committee on Bill of Rights yesterday that the action of this Convention in almost unanimously passing the one resolution that it has passed might be entirely nullified by another resolution which is before the Committee of the Whole. This resolution is No. 309. The committee on Bill of Rights held a meeting this morning at which ten members were present, and the views of those absent are known to the majority, and it is unanimously agreed that if No. 309 is passed by this Convention and appears on the ballot at the same time as the anti-aid amendment, the provisions of that measure will be entirely nullified; and not only will they be entirely nullified, but the eighteenth amendment, which deals with the public schools, also will be nullified. If they both appeared on the ballot at the same time, and were accepted by the people under the present construction placed upon such proceedings by the Supreme Judicial Court of Massachusetts, I have no doubt that the court would attempt to reconcile the conflicting measures and if they could not be reconciled the court would nullify them.

The committee on Bill of Rights desire to place themselves correctly before this Convention and before the people, and state that while they may appear lacking in attention to their duties in not being aware of the existence of No. 309, that each and every one of us was

unaware of it, and, had we been aware of it, would have tried to bring it forward before this. We do not want to be placed in the position of having this Convention pass one resolution refusing aid to all private institutions and to all religious associations, and then by another resolution put the same thing back into the Bill of Rights. That would not be treating the Convention fairly, neither would it be treating the public fairly. There is not a member of this committee who desires to have this Convention have that opinion of us, or to have the public have that opinion. We therefore ask the Convention to advance this resolution, No. 309, for consideration Tuesday next, and then to dispose of it, in order that the Convention itself may be placed right and the public may not think we are playing with them.

Mr. PILLSBURY of Wellesley: This may raise a very important question of construction, which ought to be carefully and maturely considered by some committee of the Convention, and to my mind it naturally belongs to the committee on Amendment and Codification of the Constitution. But I rise principally for the purpose of suggesting to my friend from Boston who offers the motion that it is by no means to be assumed, as he seems to assume, that the last thought, as he calls it, of the Convention will necessarily supersede any other thought. A Constitution is construed as a whole, in view of all its parts, and not ordinarily in the order of the time at which any particular provision may be adopted. It seems to me if the question is really here it ought to be sent to some committee. I should not insist upon it, if that is not agreeable to my friend who offers the motion, but I ask him whether, under the circumstances, he will not consent to have it sent to the committee on Amendment and Codification.

Mr. CURTIS: I should not consent at this time. The matter should be brought before this Convention, and then whatever the Convention decides to do I suppose we shall have to accept. I do not agree with the great lawyer who just spoke on the construction of the Constitution. I bow to his superior knowledge in all law matters, as a rule, but on the difference between himself and myself on the construction of the Constitution I do not agree, and I think I am right.

Mr. COOMBS of Worcester: I cannot speak absolutely for all the members of the committee on Education, but I will say that we discussed this matter and when the time comes I, and I am very sure our chairman, shall be very glad to go into the matter in detail. The vote was unanimous in bringing in this form of amendment. We brought in our report, I think I am entitled to say, before the committee on Bill of Rights filed even the first draft of its amendment. I am sure that it was farthest from our intention to introduce anything in the revision which we have submitted in No. 309 which should in any way controvert or tend to overthrow the amendment introduced and finally adopted by the committee on Bill of Rights. I am sure, as I said, when the time comes we shall be very glad to meet that committee and agree to any changes; because although we talked over the general essence, the general conditions, of this amendment in the committee, we did not take up the individual points, which evidently controvert the report of the committee on Bill of Rights; and I, for my part, as standing for this resolution for the committee on Education, shall be very glad to have this motion prevail.

Mr. LOMASNEY of Boston: I trust the motion of the gentleman will

be sustained, for this reason. It is all right to have all conflicting matters disposed of at one time. Of course it would be a very unfortunate situation if we should pass the Bill of Rights amendment, and this Convention should put it on the ballot, to have it said to the people of the State that we had something buried away in a favorable report that nullified the whole matter. In view of the fact that the gentleman in charge of this resolution No. 309 has no objection, it seems to me the best thing for the Convention to do is to adopt the motion of the gentleman from Boston, in order that it may go before the Convention. He says he is willing to take out the words that seem to undo what we have done; there will not be much controversy over it. I think that is the easiest way out of it and I hope this motion will prevail.

Mr. BROWN of Brockton: I have had but a moment since I came to the Convention itself, to glance at this report. I hope we are at liberty to send it down with the sectarian amendment. Conflicting? Certainly they are conflicting; but that second section with a few words additional is section 2 of chapter 5. It says encourage agriculture, encourage education, encourage the trades, commerce, arts, sciences and literature. That section makes a Commonwealth concerned with all the affections. Already you are beginning to discover that the sectarian amendment is not wanted by everybody. It is not wanted by the people who can kill it. You ought to consider if the resolution already passed should go to the people. I am suggesting at this time that this resolution also may go to the people as an offset. I should like to ask, Mr. President, if you will give me this information: Would it be within the power of this Convention to send down both of these amendments together on the ballot, and provide that the people could mark either, the one having the highest number of votes to be the one that should be adopted?

The PRESIDENT: That is not a parliamentary question; the Chair does not feel that it should be called upon to answer it.

Mr. ANDERSON of Newton: The idea of a conflict between anything that the Education Committee has put forth and the eighteenth amendment is absolutely new to me, — about a half-hour old in my mind. I heard rumors last night, but I did not have No. 309 before me and knew nothing about such conflict until it was explained upstairs just a few minutes ago. I certainly hope that this motion will be passed, and that there will be no opposition to ending this whole matter on Tuesday, because it is of the highest importance, it seems to me, that the anti-aid amendment should go on the ballot in November.

Mr. CUMMINGS of Fall River: I rise to ask the gentleman from Newton a question. I have before me a letter which appeared in the Boston Post last Tuesday, bearing the name of Frederick L. Anderson, Newton Center, September 24. I shall assume, unless the gentleman denies the authorship, that he is the author. It is discussing and dealing with a report which appeared in the same paper the day before concerning the action of the Federation of Catholic societies, and it deals particularly with the anti-sectarian amendment, and the scope of it, and I ask his attention to this sentence in it. I am reading from the fifth paragraph of the letter:

It may be said that the agricultural schools are not aimed at in the amendment, and that in most other cases, readjustments can easily be made, whereby the State,

through public agencies, may still aid the causes, though not the private societies and organizations, now subsidized. The new-born zeal of our extreme Catholic friends for some of these institutions is decidedly interesting, to say the least.

I wish to ask the gentleman what public agencies could be used or employed, if the anti-aid amendment is adopted, to aid or to readjust, for the benefit of the private schools and other private institutions, their finances, so that they could be helped; and I ask the gentleman if when he wrote that sentence he did not know the provisions, this final provision, of document No. 309, and if there was any other method of giving aid excepting through that last sentence in document No. 309?

Mr. ANDERSON: In reply I wish to say with all sincerity, and I am sure the gentleman will credit me with sincerity, that when I wrote that sentence I knew nothing about resolution No. 309 in this connection; that this is an entirely new idea to me, — that No. 309 in any way modifies our amendment, the anti-aid amendment. I wish to say that when I wrote that sentence I did not have schools of any kind in mind, but there are a large number of other organizations affected. Take, for instance, the farm bureaus of this State. The farm bureaus of this State, as I understand, at the present time are paying one-half of the salaries of the agents, and the State or county, — the county, I believe, — is paying the other half. Now, what I meant was that in such a case as that a readjustment easily could be made by which the county agents could be made county officers, could be paid entirely by the counties, and that the part of the salary which now is paid by these farm bureaus could be used for some other purpose in the general sphere in which they operate; and that thus the cause of agriculture could be helped directly through State officials, although the farm bureau, as such, would not receive any aid under our amendment.

Mr. CUMMINGS: I desire to ask the gentleman how he expects to be able to get any public aid for any institution that was not wholly under public control?

Mr. ANDERSON: I did not expect to get any public aid for any institution that was not under public control, Mr. President.

Mr. CUMMINGS: What kind of aid did the gentleman expect was going to be given through public agencies to the farm bureau, or any other institution, if it was not public aid?

Mr. ANDERSON: I did not expect that any public aid was going to be given to the farm bureau at all. I expected that a readjustment would be made in which the State could still continue to aid agriculture without giving any aid to the farm bureau in any particular.

Mr. CUMMINGS: Is it the gentleman's understanding that the anti-sectarian amendment can be avoided or evaded by grants of money to the purpose of the institution and not to the institution itself?

Mr. ANDERSON: I am now being cross-examined by one of the greatest lawyers in this State. Never having been on the witness-stand before, I am somewhat green in the matter of answering these questions. I wish to say that, to my mind, the question cannot be answered Yes or No and that I think in some cases the great causes, as I said in my letter, still can be aided directly through the public agencies. For instance, the great cause of agriculture still can be aided directly through the State Board of Agriculture, or public

officials, while these private societies no longer can receive a single cent from the State, — a particle of public money from the State.

Mr. CUMMINGS: I shall regret if the gentleman thinks that I am assuming the rôle of cross-examiner. It is a friendly interchange of ideas between the gentleman from Newton and myself, in the presence of this Convention, with a view to finding out, if we can, what was in his mind when he urged the passage of this amendment. Now, if we can aid the cause of agriculture, — and it needs aid, I confess, — why cannot we aid the cause of education, why cannot we aid all the other delightful and appealing causes that apparently have been smothered and put away by the anti-aid amendment? Why not one as well as the other?

Mr. ANDERSON: If I may answer, I will say that the State may still afford aid to the cause of education through public agencies. It may raise, as it always has raised, public money in every city and town in this State and give it to the public schools. It may still give its money, as it always has done in the past, to the publicly owned and publicly controlled higher educational institutions. There is no reason why it cannot do that; and, in doing that, it will aid the cause of education in the very largest way. I feel, too, that the anti-aid amendment in the end probably will bring about a finer system of public education in this State, from top to bottom, than the State ever has enjoyed before, and all from public money, spent through public agencies, and delivered through public officials.

Mr. LOMASNEY of Boston: May I suggest that the Convention adopt the motion of the gentleman from Boston, and that will bring the whole matter before the Convention for Tuesday, when we can go into all these matters. Then everybody can go over these different measures between this and Tuesday, study the Constitution, see what the difference is, and be ready to take up the whole thing on that day. I hope the motion will prevail.

Mr. BENNETT of Saugus: Before the matter is laid over until Tuesday I should like to have an explanation of the purpose of this amendment, in order that we may spend these two days to some extent in digesting it with intelligence. What is the purpose of this amendment? I called the attention of the chairman of the committee on Education to this matter in the corridor a while ago, while the other matter was under discussion, and asked him what was the purpose of having Harvard College in this amendment, what was the specific value of it, and what was the general purpose of the amendment, and if it did not conflict with or cause some confusion respecting the amendment reported by the Bill of Rights Committee. Well, I understood him to think there was nothing in that at all. Then I asked: "What is the purpose of this amendment?" and some of the gentlemen standing by said: "It is purely sentimental." We dismissed the matter there, leaving it that it was purely sentimental. Now it seems to me, if we are to have a discussion of the main question, that those of us who are not thoroughly up on these subjects should have left with us, if possible, a statement as to what this motion is for, and whether it is purely sentimental as respecting Harvard College and the other institutions; or, if it has a purpose, what is that purpose?

Mr. WINSLOW of Newton: I hope this motion will not prevail. This Convention has adopted in the anti-aid measure two distinct and

extremely important matters. It has tied those two together and is about to put them out to the people and say "Answer 'Yes' or 'No.'" It seems to me that, in a matter which required a month for decision, the members of this body ought to be at liberty to speak before the people when that comes up. I hope nothing will be done here to bring that matter before the people at this coming election, because there is no evidence whatever that we shall adjourn before November, and certainly if there is anything which ought to be presented to the people thoroughly it is this anti-sectarian or anti-aid, or whatever you may choose to call it, amendment. Moreover, at the present time we have before us two extremely important measures, the I. and R. and the dealing in public necessities. It seems to me that two are enough to place before the people at one time. If it is supposed that by taking up this measure we can settle it in a day or two, it seems to me we are not taking into consideration the attitude and experience of this Convention in the past. Why bring in a third serious matter before we have settled the other two? I earnestly hope, Mr. President, that this motion will not prevail.

Mr. PELLETIER of Boston: I understand that the gentleman who has just taken his seat is a member of the committee on Education, which passed or has given us this resolution No. 309. I should like to ask him if in his opinion that does not really destroy the so-called anti-aid amendment which already has gone to engrossment?

Mr. WINSLOW: When this matter was under consideration in the committee on Education, the legal lights of the committee informed the committee, as it is my recollection, that this would not produce that result. Personally, however, I may add that if it should do so I should be extremely glad.

Mr. PELLETIER: It seemed to the committee on Bill of Rights, after a careful although a short examination of this measure, that it might render absolutely abortive and useless the anti-aid amendment that was so long discussed here, and that this resolution No. 309 not only does that, but absolutely in effect repeals the eighteenth amendment. Now, the question I should like to ask any member of that committee on Education is this: When we were discussing and giving so much time on the floor of this Convention to the Curtis amendment, the anti-aid amendment, when men like the distinguished gentleman from Fall River (Mr. Cummings) asked for the very thing that resolution No. 309 gives, why did not some member of that committee, which already had reported the measure, stand on this floor and say to this Convention: "We have got the amendment, Mr. Man from Fall River, that you are asking for"? Do you remember the question that I asked this Convention? I asked why some one would not come forward with a proposition that should make it legal to give public money for private purposes. Why did not some member of that committee on Education say: "We have got the amendment; it has been reported here since July 13"? Why this silence?

Mr. BENNETT: I should like to ask: Why did not the committee on Bill of Rights know about this resolution themselves? [Laughter.]

Mr. PELLETIER: The committee on Bill of Rights feel that this matter ought to come up at this time. We feel there has been an imposition exercised here, wittingly or otherwise, — it does not make any difference. There is no use in analyzing motives; acts count. Some-

thing has been lying dormant here in this Convention that went to the very vitals of the anti-aid amendment. We have just discovered it. Call us stupid, if you will. Say that we should have read through the hundred-odd measures here. We have not read them, and we did not know of this one until yesterday, and we are here honestly to tell you this is the first minute we have heard of it; and we say that it is so important that the matter ought to be considered, and we ask that the I. and R. and the food amendments give way to this and let the Convention have it on Tuesday; because if you are going to pass No. 309, then call back the anti-aid amendment and kill it decently. [Applause.]

Mr. MAGUIRE of Boston: I introduced early in the session resolution No. 73. The reason for introducing that resolution was to emphasize physical education. I went before the committee on Education and argued very strongly on the subject. I may say that when I started to write the resolution I found some difficulty with the section of the Constitution providing for the encouragement of literature and learning. I rewrote the first part of it, but the part of the resolution in which I am most interested, most concerned about, was this clause:

And, further, it shall be the duty of the Legislature to render obligatory in all schools and colleges and universities the practice of physical training, competent to strengthen the body and perfect the health of the individual.

Finally, the Legislature shall render compulsory in all grammar schools and high schools of the Commonwealth adequate instruction in anatomy, physiology, and personal and public hygiene.

Now, all that the committee on Education gave me in the resolution that they have reported is the word "physical". If they expect support of that resolution, and say that they base it on resolution No. 73, I ask the Convention to read resolution No. 73 and see if there is the slightest connection. Personally I am opposed to sectarian appropriations and to using public money for private purposes. I believe that resolution No. 309 ought to be considered immediately, in order that the whole matter may be threshed out. The first part of my resolution, while it may seem very broad, was, as a matter of fact, merely sentimental, stating those things on which we all agree. At no time had I the intention of aiding or abetting any movement for sectarian appropriations or for public aid for private institutions.

The motion to assign the resolution for consideration Tuesday, October 2, was adopted and debate was resumed on that day.

Mr. COOMBS of Worcester: I should like to speak very briefly on No. 309, and I should like to say a word or two before I come to the question before us, in the way, if I may call it, of personal privilege.

I understand that in the columns of one of the Boston papers a day or two ago, it was said that I, the clerk of the committee on Education of this Convention, was going to "put something over" the committee on Bill of Rights; that I, a professor at the Worcester Polytechnic Institute, in some way getting myself named the clerk of that committee, had in my hands, after the committee meetings, the framing of the measure which ultimately was presented as No. 309, which is before us for our consideration. Now, Mr. President, it happens that I am a professor at the Worcester Polytechnic Institute; it happens that I have been engaged there for 27 years; it happens that I, as a professor at that institution, appeared before the committee on Bill of

Rights and tried to explain a little as to what we were doing there, as to the nature of the school and especially as to its non-sectarian nature. But, Mr. President and gentlemen, when I became a delegate to this Convention I became a delegate as a citizen of the Commonwealth, and when I became clerk of that committee I became clerk as a delegate to the Convention and not as a professor of the Worcester Polytechnic Institute; and whatever might be my own individual feelings in regard to the merits or demerits of the so-called anti-aid amendment, I merged those feelings absolutely in my identity as a delegate to this Convention; and I will say that I did absolutely nothing in the way of shaping the report of the committee on Education in any way to put anything over on the committee on the Bill of Rights.

Let me say further, — and this is in connection with what was said last Friday by a member of that committee who rose here and with great vehemence asked the committee on Education why they had not told the committee on Bill of Rights what they were going to do. Why, good heavens, Mr. President, we went through our deliberations, we completed our report, and it was a unanimous report. We had our meeting on Friday, the 13th of July, and adjourned at three o'clock, and we filed our report at quarter past three that day. When did the committee on Bill of Rights file their report? When did any member of my committee, or when did I, have any knowledge as to what the anti-aid motion was going to contain? The article in the Boston daily would have paid me greater compliment, perhaps, if it had ascribed to me, not the keenness of the politician, but second sight, making me able to read two or three weeks ahead what the committee was going to bring out when the time came.

We filed our report, the report was there, the report was printed, as far as I recall, long before the committee on Bill of Rights submitted their report.

Now, Mr. President, those are the absolute facts; and, as I said, I wanted to speak very briefly along the line of personal privilege, so far as possible to clear myself from any imputations that I had the least intention of "putting anything over" on the Bill of Rights Committee, or in any way nullifying their work; and in extenuation of my position I may say that I voted for the report of the committee, as the record will show if it be examined.

Mr. Pelletier: I think perhaps the gentleman referred to me, and if that is so I believe he was mistaken. My criticism of the committee on Education was that it had not spoken on the floor of this Convention; not a complaint that it had not told the story to our committee, but that when all this subject was being discussed here no member of that committee had said a word about the resolution it had reported.

Mr. Coombs: I shall come to that in just a moment. I am very glad that the member of the committee on Bill of Rights has spoken. I shall come to that in just a moment and tell why no member of the committee on Education rose on this floor to say a word.

May I briefly go over the several matters referred to our committee? If you will refer to your docket you will find that they came under Nos. 24, 72, 73, 157 and 158. No. 24 was submitted by a delegate of this Convention. If you will examine that you will find that it looks toward the elimination in the Constitution of chapter 5, section 1,

which is headed "The University," and chapter 5, section 2. The committee on Education held several public meetings, and at one of their public meetings they had before them the proponent of that recommendation and the president of Harvard University. Each appeared, each told what he would like to have done. As a result it was agreed to eliminate the first section. The later material was rewritten by the head of Harvard University, and appeared in section 1 under amendment 309 in the exact wording of President Lowell. The remaining part of chapter 5, — that is, section 2, — was rewritten by a subcommittee of the committee on Education, consisting of the chairman and of the clerk, myself. I will come to that in a moment.

No. 72 was an article submitted in behalf of teachers of the city of Worcester. Last year an effort was made to grant the teachers of Worcester a sabbatical year, a leave of absence once in seven years. It was ruled by the city solicitor that it was illegal. An amendment to the Constitution was drafted, submitted to our committee, the committee were unanimous in favor of the amendment, but they were unanimous in agreeing that it was matter of legislation and not a matter of constitutional enactment. Those petitioners were therefore given leave to withdraw.

The committee on Education were asked by the State Commissioner of Education to incorporate No. 157. That was submitted to our committee, the Commissioner appeared before the committee and set forth the facts in this case. Our committee were almost unanimously against that. The Commissioner then submitted a revised form. I have that revised form in my hand, and I will read it for the interest of the members of the Convention. It reads thus:

> The Legislature shall have power to determine the organization of the public school system of the State, and to make such provisions by taxation or otherwise as, with the income arising from permanent school funds, will secure a thorough and efficient system of public schools.

Now, the committee on Education threshed that proposition out and incorporated it with very little change, the change being the elimination of the word "determine". I could explain why we eliminated that, if it were advisable, but I do not know that it is worth while to comment on that at the present time. I will say, further, that that suggestion from the State Commissioner is incorporated in substance as the closing clause or sentence in No. 309, beginning with the words "To this end the Legislature," and so on.

Now, there were two other recommendations laid before the committee, one, No. 73, by the delegate who sits in this division (Mr. Maguire). Mr. President, it was a good recommendation, an excellent recommendation. The gentleman from Boston who proposed that, who sits before me in this division, appeared before us and made a splendid argument for it, an argument that appealed to every member of the committee. But, Mr. President, it seemed to us that we should try to be as brief as possible. If we had incorporated everything he put before us, excellent though it was, it would have extended our very small part to an undue length. We, therefore, after full deliberation of the very excellent suggestion, No. 73, made by this gentleman, decided to incorporate one word as embodying the essence of his amendment, and that is the word "physical". I might say that the very closing words of his amendment, "personal and public

hygiene", were objected to very strenuously by an opponent who appeared and gave reasons for his objection. But we did incorporate, Mr. President, the word "physical," which we felt would embody the essential idea of what the gentleman wished to incorporate, and that comes in the very closing clause, "for full mental, physical, and moral development."

There was submitted to us one more recommendation, which is numbered 158, an excellent one. But we could not incorporate that. We all agreed that there should be thorough instruction in the duties of citizenship, and all that sort of thing, but we could not incorporate that.

So what did we do? So far as we could, we took the various recommendations and we incorporated them, basing our new form on the older form which has existed in the Constitution for 137 years, and the various recommendations appear, sir, under section 2 of No. 309.

Now, let me say, — and this is in answer to the gentleman in the second division (Mr. Pelletier) who rose to make a statement of explanation a moment ago, — let me say that the committee on Education were unanimous in bringing in this recommendation. The committee on Education were unanimous in feeling that there was nothing in this section which would in the least degree antagonize the provisions of the anti-aid amendment so far as we knew those provisions; and I repeat that we did not at that time know the essence of the so-called anti-aid amendment, and the framers of that amendment themselves did not know it, because of the several diverse amendments suggested, that resulted in one quite different from the original. That is the reason, Mr. President, why no member of the committee rose on this floor to say anything when that most interesting and important question was under way.

Now, I repeat, the committee on Education are unanimous, — were unanimous and are unanimous. We met this morning, eleven of us were there, and we are unanimous in feeling that there is nothing in No. 309, section 2, which, explicitly or implicitly, so far as we are concerned, is against the anti-aid amendment as adopted and engrossed. In furtherance of our opinion, I may say that informally we have talked with a number of lawyers, and we have found, as the distinguished jurist from Wellesley told us last Friday, that some of the ablest lawyers have agreed that that is not and will not be antagonistic to the anti-aid amendment as adopted. More than that, the members of the committee felt that even if it were antagonistic there would be absolutely no feeling on their part of opposition. In other words, up to the point of the publication and setting forth of that section as our will, we shall agree that any words of reservation, any words of qualification, that do not change the essence of that, we shall agree to absolutely. Beyond that I cannot go. I cannot speak for my fellows on the committee. But up to that point, I repeat, we are agreed; and I cannot emphasize too much the feeling we had that there was absolutely no opposition on our part as a committee to the enactment of the anti-aid amendment so far as we understood it.

Now, what is the nature of this section? If you have read it you will note that it is general; it is not specific. It reënacts in a somewhat modified form the former statement of the Constitution of 1780, in general binding the Legislature and the authorities to cherish literature,

education, various organizations which have for their aim literature and learning. As I say, it is a general enactment; and we were strongly of the opinion that in any case of interpretation a specific enactment, which we understood then the anti-aid amendment would be, and which we are confirmed in our opinion now the anti-aid amendment is, — that the specific would override the general; and we did feel, as members of that committee, that there should be reënacted in constitutional form the essence of that section that has come down to us from 1780. I have explained the last sentence, the sentence having to do with taxation, which, as I said, we introduced at the request, somewhat changed I admit, of the Commissioner of Education; but our idea of that was that there should be no application of money raised by taxation to anything save the public school system.

Now, if there is anything in this general section which seems to controvert the provisions of the anti-aid amendment, as I have said, I am sure my colleagues and I shall be very glad to agree to any amendment, to any change. I reiterate, and I cannot repeat too strongly what I said before, that our intention was not to controvert that. At the same time our intention was very strongly to lay down those general principles which have governed this State since the Constitution of 1780. It seemed a pity to us, Mr. President, that this matter had not been laid before the combined committees. We regretted at our first meeting that the matter of the anti-aid question had not been referred to our committee, or that our committee had not been called in consultation. But we made no protest. We took the very small task laid upon us and we did our best. We submit this resolution No. 309. I have tried to make as clear as I could our position; and, as I said before, up to a certain point we stand united. What the Constitutional Convention may do we do not know. If it tries to introduce certain measures opposed to the essence here, I am inclined to believe that we shall oppose them as a committee. If there is a saving clause introduced here to obviate the possibility of misinterpretation I feel certain that no member of the committee, certainly not myself, will in the least be inclined to oppose that. I am very glad to have had this opportunity to say a few things along the line of the amendment which we introduced, to make a few explanations, and I shall be glad to add any further information if it is within my power to do so.

Mr. Brown of Brockton: Before the chairman of the committee takes his seat I would ask if this Convention should strike out the first section, would not section 2, if adopted, be complete in itself?

Mr. Coombs: The delegate from Brockton does me honor in calling me chairman of the committee; I am simply the humble clerk. I am very glad to answer the question. It came up in our discussions, and what he says I think is essentially true. If the delegates will recall the older form of the Constitution, there are two sections, one referring directly to Harvard College. That was stricken out at the suggestion of the delegate from Boston in the second division. We seriously questioned whether we should not strike out the section here numbered 1, as it appears at first. We called, as I have stated, the president of Harvard University, and he made a strong plea, I think almost entirely on sentimental lines, urging the retention of that, with the addition of one or two words which will take in institutions founded at a later

period. "Other institutions of higher learning," are the words. For that reason, Mr. Chairman, I think I am safe in saying we decided to retain that for sentimental reasons.

Mr. BROWN: One more question. In the second section, in line 4 from the bottom, is the word "insure", — "insure a complete and efficient system of education which will . . ." If those words are stricken out, so that the section shall read: "To this end the Legislature shall have power to make such provision by taxation or otherwise as will in conjunction with the local agencies and institutions above enumerated afford to every one opportunity for full mental, physical, and moral development," etc., — with that stricken out, would not the entire effect of your section 2 be to kill the anti-aid or anti-sectarian amendment, so that it no longer can be called anti-aid? Is not the full effect of that section to give power to the Legislature to encourage private societies and public institutions, by rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country? Is not that the effect of what you have reported, — that is, that the Legislature shall have certain power which has nothing to do with education?

Mr. COOMBS: I think I am safe in saying that those words were incorporated in order to be consistent with the earlier part of that section, the idea being that the educational systems take in not only the public schools and the secondary schools, but higher schools and colleges, various technical schools, and so on. I am not at all sure that those words could not be stricken out. They were incorporated for that specific purpose, in order to square with what comes before. I do not feel that they are essential to our interpretation of that measure.

Mr. BROWN: I would direct the attention of the gentleman to this suggestion: The anti-aid amendment or anti-sectarian amendment, already reported, provides that money shall not be used except for public schools, etc., or schools and colleges under public control. My suggestion is that those words in your amendment might raise a doubt as to whether we repealed the anti-sectarian amendment, but with those words out you are in full harmony. I am suggesting the idea that your second section, with those words stricken out, without the first section, is in complete harmony with the anti-sectarian or anti-aid amendment.

Mr. COOMBS: I might say in that connection, — this is to anticipate a little, — I might say in this connection that various words have been suggested in order to remove any possible inconsistency between our amendment and the anti-aid amendment. Now, as I said, we do not wish to make any change if we can avoid it; but I will say that this morning a lawyer, — and a good one, I am told, — suggested to me these words to be inserted after the word "shall," about six lines from the bottom: "To this end the Legislature shall, save as otherwise provided in this Constitution, have power to make such provision . . ." Now, I know that the majority of the committee would not be opposed to those words.

Mr. MCANARNEY of Quincy: Will the gentleman explain to the Convention what will follow, so far as the anti-aid amendment is concerned, if the people adopt the anti-aid amendment and then at the same election adopt resolution No. 309? Just what would be the effect

upon the anti-aid amendment, and what portion of the anti-aid amendment would then remain in force?

Mr. COOMBS: Our committee in their discussions and in this discussion this morning were strongly of the opinion that the anti-aid amendment as passed to be engrossed would take precedence of this in every detail. We agree that this amendment is a general amendment, and that, while in the last sentence it may seem as though money raised by taxation could be appropriated to higher institutions, the words of the anti-aid amendment are so specific that we never for a moment would hesitate in the interpretation. That was our view of the matter.

Mr. MCANARNEY: If I correctly understand the question I suppose his interpretation of the law would be that resolution No. 309 would not have any effect in so far as enabling the towns or the State to aid higher institutions of learning.

Mr. COOMBS: Yes.

Mr. MCANARNEY: Then, if that be so, why not strike out of No. 309 all reference to those institutions, if that is what you mean? Limit your amendment to what you say it would apply to, — only public schools. Then I would ask: What is the occasion of adopting the amendment if it would apply only to public schools? Is not the present law strong enough so far as it applies to public schools?

Mr. COOMBS: I tried to make emphatic that this section 2 was passed by our committee as a matter of sentiment. It was a general enactment; it was not intended to be a special enactment. If you will note the following section, 2, "Encouragement of Literature," — we felt that we could enact or reënact something covering a general field.

Mr. LOMASNEY of Boston: In 1853 did not the Constitutional Convention then in existence go into the whole question of Harvard College and its relation to the people of the Commonwealth, and pass the clause in the present Constitution now in question? Why should we interfere with that? There is no general demand to interfere with it. It has existed since 1853. Why interfere with it? Why should we interfere with that sentiment to any extent? Why should anything new be done about it? Here is an amendment that has stood since 1853. The gentleman speaks of "sentiment". Now let us see. Is this sentiment, inserting those words that were not in section 2, after the word "Cambridge," — "all other universities, colleges and higher institutions of learning"? Those were inserted in section 2, and then they inserted these words: "To this end the Legislature shall have power to make such provision by taxation or otherwise . . ." That is in conjunction with "all other universities, colleges and higher institutions of learning above enumerated." What institutions were "above enumerated"? "All other universities, colleges and higher institutions of learning." Those words were put in, and this section down here was to make them applicable to this section on taxation. Now, I claim, Mr. President, that is entirely a questionable proceeding to pass at this time when we are trying to pass the other measure. Why not dispose of this and kill it? It should not pass. Sentiment should not prevail against an amendment of the Constitution made in 1853, agreed to by the Convention for Harvard College; and, without any doubt, they passed upon it in these amendments.

Mr. COOMBS: May I have just a moment to answer the last speaker? I respect his opinion in all matters. I respect even more, and I think

I speak for my colleagues on the committee, the opinion of the president of Harvard University. I happen to be an Amherst man. It is perhaps a misfortune that I am not a Harvard man. But I have some respect for sentiment, and when the president of Harvard University appeared before us and suggested that we incorporate those words in section 2, I for one was very glad to act upon his suggestion. The last sentence, as I think, was suggested by the Commissioner of Education. I admit that it was put in there, in the minds of the committee, with a good deal of dispute. The question was raised as to whether or not it might not be interpreted as applying to the institutions above. I have said that some of our members felt that it would be so interpreted, but we have taken legal counsel, and the member from Wellesley (Mr. Pillsbury) last Friday had no fear of that. We have another opinion from a high lawyer in this Convention to the same effect. I repeat, and I say this for the benefit of the delegate in this section who has just spoken, I do not believe that our committee for one moment will insist on retaining those words if they seem to injure the so-called anti-aid amendment. I cannot make that too emphatic, Mr. Chairman.

Mr. MERRILL of Gloucester: It is with some hesitation that I rise to speak on this matter, for I find that I must oppose the gentleman from Worcester (Mr. Coombs) and also the honorable delegate from Wellesley (Mr. Pillsbury). As I understood the question which was asked last Wednesday of the honorable delegate from Wellesley, it was this: If the anti-aid amendment, so called, is submitted to and adopted by the people this year, and then resolution No. 309 is submitted to the people and adopted by them next year, what will be the effect of the adoption of No. 309 a year later than the anti-aid amendment? As I understood his answer, it was that the whole Constitution was to be considered together, and that one would not be considered as amending the other. I think that it must be that he misunderstood the question, for there can be doubt as to its effect. We all will agree that if both were passed and both accepted by the people at the same time then they would be considered together and would be reconciled, if possible; but if one was passed and accepted by the people a year after the other, then the one that was passed last must in effect be considered as an amendment to the former. Now, looking at document No. 309, and comparing it with the anti-aid amendment as passed to be engrossed, what do we find? We find in the first place the anti-aid amendment says that we shall not interfere with religion. That is in there. Document No. 309 does not affect that at all. Section 2 of the anti-aid amendment says that no money shall be appropriated to any school or institution wherein any denominational doctrine is inculcated. In all probability document No. 309 would not affect that. Then, going further, the anti-aid amendment says: "Nor shall any money be appropriated to any high school or any college, infirmary, hospital, or educational, charitable and religious undertaking which is not publicly owned and under the exclusive control of the State." Now, there is where the conflict will come.

Chapter 5 of the Constitution now provides respecting Harvard College, as has been said by the delegate from Boston in the third division. The committee on Education has placed in document No. 309 words which make it much broader, and I refer to the words at the

top of page 3. After referring to Harvard College it says: "And the trustees and governing boards of all the universities, colleges and institutions of higher learning," etc., "shall have the rights, privileges, immunities and franchises which they now have or are entitled to have." Now, what does that mean? Every college in this State to-day has the right to come to this Legislature and ask for an appropriation to assist it. I think that proposition is admitted. Two of the higher educational institutions have done so, namely, the Massachusetts Institute of Technology and also the Worcester Polytechnic Institute. Does it not raise a question in your mind, with what there will be in this section 1, the latter part of it, if this is passed, that those same institutions and every other institution would have a right to come to this Legislature, even after the passage of the anti-aid amendment, and ask for an appropriation, and would not the Legislature have the right to give it to them? That is one point.

Then, in section 2 you will notice that "all other universities, colleges and higher institutions of learning" have been inserted, and then at the very end of this thing: "The Legislature shall have the power to make such provision by taxation or otherwise as will insure a complete and sufficient system of education in those institutions above enumerated."

Mr. BRYANT of Milton: I should like to ask the speaker this question: Whether he considers that the power of the Legislature to exempt institutions of learning from taxation is dependent on this word "immunity" contained in this particular clause, and whether throwing out that clause would tend to take away from the Legislature power to exempt educational institutions not under public control?

Mr. MERRILL: I have not given that point special consideration, but for an offhand judgment I should agree with the gentleman from Milton that if the word "immunities" were stricken out it would tend to take away from the Legislature the power to exempt them from taxation. But the point to which I wish to call the special attention of the delegates is this: That under document No. 309 the Legislature is given absolute power to raise money by taxation which may be used by any institution in this State, college or higher institution in this State, for their own purposes. Now, is not the real question and the conflict of these two proposed amendments this: We have decided by the passage of the anti-aid amendment that public moneys shall be spent by public officials for the benefit of all the public. Now, under document No. 309 is not the effect of that to allow public moneys, raised by the State, to be given to institutions whether public or private, and spent by them for the benefit of people who are attending those institutions? Is not that the real point of difference in both of these, and is not the real question for us to decide whether or not we want our public moneys spent for the public by public officials, or, *contra?* By the passage of the anti-aid amendment we already have said that we desire to have our public moneys spent by our public officials for the benefit of the public. Now, in No. 309, if we vote for that, are we not saying that, much as we should like to have that done, we would rather have it spent by private institutions for the benefit of private individuals? Mr. President and gentlemen of the Convention, it seems to me that document No. 309 and the anti-aid amendment

are diametrically opposed to each other. You pass the one and you kill the other. I cannot see any other solution of the difficulty.

I hope that the Convention will reject absolutely document No. 309 and let chapter 5 of the Constitution remain just as it is, without any change whatsoever.

Mr. Good of Cambridge: I should like to call the attention of the delegates briefly to the history of some of the exemption laws that are now in vogue in this Commonwealth. I should like to call the attention of the gentleman from Worcester favoring resolution No. 309 to a statute passed under our Constitution, exempting the students of Harvard University and other universities, placed in our statute-book in 1837. As far back as 1808, my city of Cambridge was permitted to tax college property lying out of college bounds, excepting property improved by certain college offices, and in 1818 this exception was extended to all officers and students and to all unoccupied property. In 1829 all officers and students of Harvard, as well as of Williams and other institutions, and their preceptors, and academies, also were dropped. The law relating to Harvard College provided further that "the inhabitants of the town of Cambridge may for town purposes tax such real estate in the town belonging to the corporation of Harvard College as not within the college bounds, and not occupied by the president or any professor, instructor, tutor, student or resident graduate thereof." It went further and exempted property of Phillips Academy at Andover. It continued on and exempted the property of Williams College and of Amherst College. It went further and exempted the personal property of all literary, benevolent, and charitable and scientific institutions incorporated within this Commonwealth, and such real estate belonging to such institutions as was actually all occupied by them or by the officers of such institutions for the purpose for which they were incorporated.

The Supreme Judicial Court, Mr. President, made a finding relative to the constitutionality of the various Massachusetts exemptions. The third article of the Declaration of Rights, and article XI of the amendments, which was substituted for it, recognized the importance of the public worship of God, etc., etc. As taxation to procure property for such uses is permitted, exemption of property so procured is permitted under the special provision of the Constitution touching upon the subject of education, and you have further constitutional requirements for the encouragement of literature and science and for the diffusion of education among the people. Such exemptions did not prevent the taxation of the people from being proportional and equal.

I believe, Mr. President, that the subject-matter in resolution No. 309 is well covered within our present Constitution, and I am in accord with the views as expressed by the gentleman from Gloucester, that there surely is an interference with the anti-aid amendment in this so-called educational resolution No. 309.

Mr. Pillsbury of Wellesley: As I have twice been misquoted here this morning I am led to believe that I may have been misunderstood, and while my opinion may be of little consequence I prefer to correct the misunderstanding. The gentleman from Worcester (Mr. Coombs), in the utmost good faith, no doubt, quoted me as having expressed the opinion to the Convention that there is no interference between these two resolutions. I am far from having said that or from having enter-

tained any such opinion, for I have never looked into the question of how far there may be interference between them, and have no definite opinion upon it at this moment. What I said here the other day, as I recollect it, and all I intended to say, was that it is not necessarily to be assumed that between two constitutional provisions the one which is adopted later supersedes the other, and that is true. The question is: How far are they necessarily inconsistent with each other? There is no doubt, of course, as every lawyer knows, of the general rule that of two statutes necessarily and absolutely inconsistent with each other, the later statute would be held as superseding to that extent the former. At any rate, there is so much risk that it would be so held that the contrary cannot safely be assumed. How far there is any repugnancy between these two provisions I do not attempt to say, for I have never undertaken to examine the question.

The real difficulty with the situation here, — and I say this with due deference to my friends of the committee on Bill of Rights, — is the difficulty which attended the sectarian measure throughout its whole history, the superiority of the committee to any advice and their intolerance with any interference by the Convention in their conduct of the measure. The only thing they would ever allow the Convention to do with it was to pass it, without one word of change. That they were willing the Convention should do, and that only. Now there is a move in that committee to meet the existing difficulty, for they are afraid that their amendment may be impaired by the operation of resolution No. 309. Probably there are a dozen men in the Convention, perhaps more than a dozen, who can tell them how to meet and cure it, but my advice has not been asked, and I am not in the habit of volunteering it where it is not wanted.

Mr. Edwin U. Curtis of Boston: The committee on Bill of Rights does not ask and does not want the suggestion or advice of the gentleman from Wellesley (Mr. Pillsbury). The committee on Bill of Rights may have been negligent in not seeing this report, and for that we ask the consideration of the Convention, and offer no insinuations against the committee on Education for anything they have done. They put their report in, and we did not see it, and we admit it. Now the thing to do is to make it right. I want to state, Mr. President and gentlemen of the Convention, what my understanding of the law is, and not what the gentleman from Wellesley's understanding is, and I leave it to the eminent lawyers in this Convention, or to the eminent delegate from Fall River, if I do not state the law correctly. If those two propositions were put on the ballot at the same time, and were accepted by the people of this State, then the Supreme Judicial Court would try to reconcile them, and if they could not reconcile them they would nullify them. The other proposition is that if the anti-aid amendment goes on the ballot this fall and is accepted by the people of this State, and a year hence or at some other time No. 309 goes on the ballot and is accepted, the Supreme Judicial Court will say that it is an amendment to the original proposition and that the amendment passed at a latter date is the law, and I say that is the law and ask any gentleman here to speak if I do not state it correctly. There are other former Attorneys-General here, there is a former Justice of the Supreme Judicial Court, and if I have not stated it accurately I will accept their correction. But I will not accept the correction of a man

who has stood here and opposed the anti-aid amendment from beginning to end and never offered a suggestion for its improvement. We have passed that resolution. It has been accepted by the Convention. It has been engrossed. It has been ordered to be submitted to the people. It is out of the hands of the Convention. The matter before this Convention is No. 309, and I agree with the gentleman from Gloucester (Mr. Merrill) that the thing to do is to defeat that resolution. Defeat it, why? Because Harvard College is taken care of in the amendment as it stands to-day. I submit that this resolution is not necessary. It is not needed at this time. It is all covered in the present Constitution. And I suggest, gentlemen, as the gentleman from Gloucester did, that the thing for the Convention to do is to defeat the resolution.

Mr. PELLETIER of Boston: I want to ask a question of the secretary of the committee on Education, whether or not in his opinion under No. 309 the Worcester Polytechnic Institute might receive appropriations from the State.

Mr. COOMBS: I am delighted to answer that question. I feel that under No. 309 the Worcester Polytechnic Institute has no more chance than it has under the anti-aid amendment; it was absolutely ruled out. That was my interpretation from start to finish. It will be as long as I am debating the question.

Mr. PELLETIER: I listened very intently to everything that was said here, particularly by the secretary. As far as I can find out, they are wanting to amend the Constitution, — because of some sentiment. I do not know what the trouble is with the old wording. It is archaic, it is old-fashioned, and I do not know whether it is quite up to our literary standards of to-day; but they have not changed any adjectives, they have not changed any nouns or verbs or adverbs, they have added something entirely new. What was the matter with the existing Constitution? What is it Harvard College wants that it was not getting under the old amendment? Why not be frank? Why does the president of Harvard come over here and ask for a change in the law affecting Harvard University? Cannot we get that reply? Does not anybody know, or did the committee, because of his eminence, simply defer to his wish and suggest this amendment to the Constitution? I should like to know wherein the old Bill of Rights was wanting so far as Harvard University is concerned, and I should like to know whether some other college or university came and asked to be placed in with Harvard. "Other institutions of higher learning" were added. What institutions were they? So far as the second section is concerned, it uses very largely the wording, but it attempts to knock into one section the two or three or four sections that the fathers thought ought to be arranged in separate form. I do not know what criticism there is of the old form. We are retaining a great deal of the old Constitution that never should go into a brand-new one to be made to-day. We are doing it out of reverence, doing it because, after all, it is pretty high moral speech that they used in those days and we think that there is some good to come from it. Why this committee should attack to-day that lovely, old-fashioned sentiment and high moral standard of the fathers I do not know. And why this provision, this last sentence, that the Legislature shall have power to tax, and otherwise, for mental, physical and moral development in connection with higher institutions,

colleges, etc.? Who asked to have that put in? Does it add something that the Legislature could not do better? If so let us hear it. Let us have it. Let us not ask the people to adopt something that we do not understand. It is just enlarging the power of the Legislature regarding raising money by taxation. Our friend from Worcester says: "I must confess that the Commissioner of Education brought that in," and again shall we assume that the committee bowed to that eminent person? We have two gentlemen here quoted as having asked for something. You and I are asked to vote for it. We are asked the serious, honest question as to whether or not the adoption of this measure would not nullify the anti-aid amendment. There is a difference of opinion on that, and the question is of importance. If they want the Legislature to support any institutions, let them say so. Why, I ask, gentlemen, why did the Legislature need to be given that power? What power does it give the Legislature that the Legislature did not have before? I think if these questions should be answered perhaps I would change my whole opinion, but I cannot for the life of me see where the call came for these changes, and I have listened intently; and I have tried to find reasons that have not been given yet that seem to satisfy my mind.

Mr. HERBERT A. KENNY of Boston: I do not think that the amendment offered in No. 309 for the resolution in any way conflicts with the anti-aid amendment. I move amendments in section 2, striking out, in line 10, the word "higher" and inserting in place thereof the words "all schools and"; and inserting after the word "towns," in line 12, the words "and cities".

Mr. KENNY: It seems to me that the gist of the anti-aid amendment is to stop the teaching of literature in schools. Now, it is like the German government, going through Belgium, to get a franchise. Certain fanatics apparently wish to drive from our schools learning and everything else that is cultured and refined. I do not believe that any fair-minded man who voted for the anti-aid amendment, anti-aid resolution, can find fault with this resolution which supports the schools. I do not believe that my friend from Newton, my learned friend who rose with the schools, would deny those conditions to a poor community, where perhaps at certain times of the day a denominational doctrine might be taught or religion might be taught in other rooms from the room which he is in. If we believe the gentleman from the Deerfield Valley (Mr. Boyden) he does not take much stock in what has been proposed, because if the towns and cities cannot support the schools, why, then, Massachusetts is going to be in a sad way. If we are going to deny our own Commonwealth and all other Commonwealths the right to receive from the State aid because perhaps they have followed only old customs in their schools, then I say Massachusetts is making a great mistake.

I am surprised that the honorable gentleman from Boston (Mr. Edwin U. Curtis), the chairman of the anti-aid committee, is so intolerant of the opinion of our distinguished ex-Attorney-General (Mr. Pillsbury). I certainly should like very much, and I think every gentleman of this Convention would like to hear from the ex-Attorney-General of Massachusetts how we can straighten this thing out. And my distinguished friend from Boston's old Ward 8 (Mr. Lomasney) seems to be dreadfully worked up if anybody suggests the slightest modifica-

tion of that sectarian resolution. But now I say, gentlemen, if the present district attorney (Mr. Pelletier), if the chairman of the sectarian committee and my distinguished friend from Ward 8 will only kindly be a little more tolerant, this is the last time perhaps for a hundred years Massachusetts will have a chance to guard its learning. Agnostics are presenting to you a gold brick.

Mr. ANDERSON of Newton: Does the gentleman understand that the amendment as it stands now does not prohibit the teaching of religion in public schools, but does simply prohibit the inculcation of denominational doctrine?

Mr. KENNY: Now, Mr. President, will the gentleman kindly state to me the difference between the teaching of religion and denominational doctrine?

Mr. ANDERSON: I am willing to do that. By the teaching of religion we mean the teaching of those great truths of religion which are common to all denominations. By denominational teaching we mean the teaching of distinctive denominational doctrine.

Mr. KENNY: I should like to have the gentleman define what a distinctive denominational doctrine is.

Mr. ANDERSON: I think we can leave that to the Supreme Judicial Court.

Mr. KENNY: My distinguished friend is in doubt. He wants the Supreme Judicial Court to pass upon this matter, and if the anti-aid resolution is not perfect, — he does not understand it himself, — why should he ask that we strike out advances in money which we should give to these schools when he himself does not know what denominational doctrine is or what distinguishing truths are. Does the gentleman say that the Ten Commandments are a denominational doctrine, and does he want them stricken out by the law from our school-books? Would he say to the gentleman of the Deerfield Valley: "Although you have been teaching certain great truths I construe them as distinctive denominational doctrines. The State will take the appropriation from you" and thus leave ignorant those people in the Deerfield Valley or in other parts of our great Commonwealth? The great trouble is, Mr. President, it is a very weak measure. It is a measure that nobody can understand. It is a measure that the fanatics have tinctured a little bit, and we should be careful not to destroy learning in our State in order to satisfy the grouch of a few people. I believe that, because they do not understand what they are aiming at, we should not destroy learning in this Commonwealth. Learning went hand in hand with the first construction of this Commonwealth. The safety of our Republic depends upon learning. The great German element in certain sections of our city become acquainted with American doctrines only by being taught in their German schools, and is the German language a distinctive denominational doctrine? Would he have the Kaiser excluded from the German school because of his doctrines? Is that denominational doctrine? It seems to me, when a man does not understand his own amendment, that therefore he has no right to oppose the passage of this measure regarding education.

Mr. LOMASNEY: The only reason advanced for the passage of this amendment to the Constitution is sentiment. Now, Mr. President, we do not want to send an amendment to the people on sentiment. That is the only reason. Any man here, — and there are a hundred

and fifty men here, — knows that when people have a title to a piece of property, old people, they hold on to it; they do not shift. That is the position of Harvard University. They have that title. They are in the Constitution as it was left in 1853. Why start in now to interfere with it? I would say, not so quietly and so impressively as the former Attorney-General, that if my views are wanted as to how to remedy the thing, I will give you gentlemen a simple way: Kill this resolution. That is everything.

Mr. WHITTIER of Winthrop: It seems to me that this whole situation is very much befogged, in the first place with ignorance, and in the second by what is far worse, and that is a spirit of suspicion which seems to be, as we proceed from day to day, the prevailing influence of this Convention. Now, in answer to the estimable district attorney I want as far as possible to meet two or three of the questions that he raises.

In the first place, it seemed to me that this question of sectarian, or anti-aid, amendment should have been submitted to the committee on Education rather than to the committee on Bill of Rights. That was the first mistake, and it was a great mistake, because we were ignoring the committee on Education, and yet we now find that one of the most important phases of that question was met in that committee. In the first place, Mr. Chairman, take into consideration this fact: At the time that the whole question of Education, — and there were four or five different measures before us, — came to the committee on Education, this great principle, so called, had not at that time taken any definite form. I, at any rate, as a humble member of that committee and of this Convention, knew very little about this so-called great principle at stake. To be sure, I voted for the report of the committee, the resolution of the committee on Bill of Rights, but it took me a long time to be converted even to the extent that I could vote for it. At the time this measure was before our committee, — all these various measures were before our committee, — it was extremely nebulous. I, for one, never had expected that the State would be prevented from supporting education as far as granting aid to higher institutions of learning was concerned. Perhaps I was stupid, perhaps I was ignorant, but as a matter of fact that phase of the question never had interested me at all. So much for that.

The estimable district attorney raises some questions as to how this measure comes in here. I do not think many members of this Convention have examined the various resolutions which were presented to the committee on Education. The first one seems to some to be making a butt of Harvard University. I want to tell you men that one of the most impressive things in my experience as a member of this Convention was when my colleague sitting in this division, Joseph Michelman, pardon my mentioning him by name, and the President of Harvard College, — two very distinct types of our citizenship, the one the very quintessence of culture, learning, refinement, the other a man who had come to this country as an immigrant and made a valuable citizen, — when those two men stood on common ground before the committee on Education. Mr. Michelman spoke in favor of resolution No. 24, which I should like to have you examine for a moment, which had to do with the striking out of articles 1, 2, and 3 of section 1 of chapter 5, — the striking out of all of said articles 1, 2, and 3 of section

1, chapter 5, — and with wholly annulling section 1 of chapter 5. Those of you who ask to leave this Constitution in its present shape, want to examine this resolution and see if you mean what you say.

Mr. BROWN of Brockton: Does the present Constitution, the section that you strike out, give the Legislature power to do certain things in Harvard College which your resolution takes away from the Legislature? The present Constitution reads: "Provided, that the Legislature may" — but "nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said university as shall be conducive to its advantage," while your resolution says: "It is hereby declared that the Harvard College president and fellows shall hold and exercise forever all their immunities and privileges."

Mr. WHITTIER: I shall touch upon that shortly. The delegate to whom I have referred in this section desired, and quite rightly I think, to establish all universities in the Commonwealth on an equal basis. Bear in mind that at the time this Constitution was written there was practically, probably, you would say, only one such institution. It was only natural and right that the great University at Cambridge should receive the consideration it received in this original Constitution. But in all these years times have changed. That has been eloquently brought out by the gentleman to whom I already have referred. At the same time, there is a certain amount of sentimental value which I do not believe any man who faces this situation squarely wants to dispense with. The president of Harvard College, to be sure, spoke in favor of the retention of all of these sections which could be done rightly without prejudice to any other institution of learning in this Commonwealth. Harvard did not expect, did not ask for any exclusive privilege, — nothing but what was shared in common by all. She was the older sister university, institution of learning, but there was absolutely no reason why she, in preference to all others, should receive any exclusive privilege or benefit, which should not be shared by all. And in consequence of that, the change was made to which some of you take exception, and which accords to other institutions of learning the same cherishment and encouragement.

To go on to the next resolution, No. 73, offered by the gentleman sitting in the third section.

I prefer to follow these four resolutions down through their regular course, if I may be allowed to do so. My purpose here and now is simply explaining my own position, and what I believe to have been the absolutely honest above-question position of the members of the committee on Education, and to meet what I consider to be absolutely unfounded, the suggestions of insincerity, and what is even worse, which have been aimed at the members of this committee.

Here is another question raised in resolution No. 73, a long resolution, — a fairly long resolution, — which touches upon matters which we all grant to be of the very highest importance to us all. Are we going to give absolutely no consideration at all to matters which perhaps may not be possible of special treatment, but which should receive emphasis and consideration in a general way in a Constitution of this kind? Is this Constitution simply to be short, concise statements, without very much inspiration, without very much appeal to the best instincts of every one of us? Is it to be merely something

which has absolutely no inspiring force whatsoever, merely a dead letter? We thought not. We felt that this first portion of chapter 5, section 1 and section 2, was much more than that, — that it was an appeal to the very best in every one of us to encourage in every possible way these great, broad, general principles which should govern our education and govern all those other virtues akin to it. We felt that reference should be made to these matters, and consequently, while it seemed to us impossible, quite unnecessary in fact, to add the entire resolution, we did lay emphasis in the latter part, — and it is another section of this resolution which is criticized, — that the opportunity shall be afforded for full mental, physical and moral development, which will aid and encourage all to become unselfish and loyal citizens. Of course if this Constitution is to contain, as I said before, merely certain short, concise statements, leave it out; but we do not believe that this Constitution should be any such thing. It is not to be a dead thing. It should be a living force. It is to be a power, an inspiration.

Let me go on, — Number 157, No. 158. You ask how these things came into this report. It already has been touched upon, I think, by the delegate from Newton as to the disorderly, or, what perhaps would be a better word, disorganized condition of our educational system in Massachusetts. We all of us know what differences there are in the various systems of education in neighboring cities and towns. There is absolutely nothing like a uniform system of education. It has been much more ably touched upon in this Convention than I possibly can do here. It is a fact that the Commissioner of Education did appear before the committee, and I think that if he appeared before this Convention every one of you would appreciate, if you do not appreciate it now, the situation that exists in this Commonwealth at the present time. There should be established in this Commonwealth, — and I for one cannot imagine any better authority than that of the Commissioner of Education to establish such a system, — a uniform system of education. How is that to be done? The Legislature shall have power to determine the organization of the school system supported in whole or in part by the State and to raise by taxation or otherwise money for the support of the same. To use a common phrase, is there any "nigger in the woodpile" in that? I did not see one. I do not believe one is there.

You ask us how this came in this resolution. That is the only answer I can give you, and it is a very necessary situation, a situation that we should meet if we are to do constructive work, and that is what the committee on Education tried to do. We wanted to have it possible for the establishment in this Commonwealth of a uniform system of education that the disparity which exists at the present time should exist no longer; that it should be met. I for one, as a member of the committee on Education, do not intend that any member of this Convention shall criticize my motive or my action in this matter. When we had these various questions before us we had one duty to perform, — to take the best out of these resolutions and incorporate it into an amendment of the present Constitution. We did not want to throw away that which was good; we wanted to keep it, the whole of it, and pass it on to succeeding generations. As much as was good, or as much of these various resolutions as could be incorporated into the Constitution, we took and accepted, and incorporated in one general

measure. The result of what the committee on Bill of Rights had done we certainly did not know at that time. We were not prophets. We had no powers of omniscience. We did not know what sort of measure was to come here from the committee on Bill of Rights. It was all in the making then, as I said before. At that time I had not been converted to this great principle of taking away State aid from the higher institutions of learning. We incorporated into this resolution, as I said before, all that was good, all that justly could be retained from the existing Constitution, and added to it as much as we could of the various measures which would make it better and stronger and of more far-reaching good. If, as I say, you bring in another amendment which conflicts with it, we are ready, as far as it can be done, to reconcile the two. But I do not believe that any man in this Convention who really faces this question, who realizes the splendid inspiration that is contained in these first two sections of chapter 5, will want for a moment to cast it to the winds and say that it is no longer of value and of use, because it has been and it is to-day a power and a means of inspiration to our people.

The debate was continued after the noon recess.

Mr. WELLMAN of Topsfield: A number of questions have been asked in regard to this report of the committee on Education, which are very proper and which, it seems to me, can be answered without difficulty. It should be remembered that at the time this report was drawn the committee did not know what the result of the action of the committee on the Bill of Rights in regard to the anti-aid amendment would be. The committee on Education could take no stand, and desired to take no stand, one way or the other in regard to that matter. They simply desired to deal with the matters of education which were referred to them, and not interfere with any other matter before the Convention. It should be remembered also that at that time the committee supposed that anything they recommended would be a part of one Constitution. No suggestion, so far as I know, at that time had been made that any portion of the Constitution should be submitted to the people before any other portion; and I suspect that whatever difficulty has arisen here, if any difficulty has arisen, comes out of the suggestion now made that the anti-aid matter should be put before the people in November next. Now, as this difficulty has arisen subsequently to the report of the committee on Education it does not seem that the proper way to deal with it is to defeat the committee's report, but to have some amendment made to this resolution, if any is necessary, in order to conform with the new course of action which the Convention sees fit to take. As one of the speakers against the committee's report already has said, no difficulty would arise provided this report was part of one Constitution, of which the anti-aid resolution was another part. It would then clearly appear that these general provisions in favor of education were modified by certain restrictions in another part; and I do not see that any possible difficulty would arise. Many of the questions that have been asked in regard to this matter have been asked under a misapprehension of the situation. Harvard College has asked for nothing, — has sought no change in the Constitution. A petition was brought before the committee to remove from the Constitution all reference to Harvard College; and the presi-

dent of Harvard College appeared before the committee in opposition to that action. He was asked if at the present time the second and third articles of chapter 5, section 1, had any material value, — if their worth had not entirely passed away; and he admitted that he could not see that they had any present value. But (and this was the only place so far as I know where sentiment came in, — the committee has recommended nothing whatever on the ground of sentiment) we were asked to retain in the Constitution a reference to Harvard College, as a matter of sentiment, partly; and that we did in section 1. We went over that section with President Lowell, and he stated that he thought the desire of the petitioners was perfectly fair, that other institutions of learning should be placed upon the same basis as Harvard College. You will remember that in the Constitution, Harvard was mentioned as the only institution of higher learning; and it was, at that time. It seemed to the committee to be unwise, and President Lowell admitted that it did to him, to retain the reference to Harvard without referring to other institutions. And that was why section 1 was slightly modified. Articles 2 and 3 of chapter 5, section 1, are omitted entirely, no one appearing before the committee supposing them to have any value. It seemed a pity to retain and reprint them in the Constitution year after year if they have no value whatever, — not even a sentimental value.

Section 2 of chapter 5, on "The Encouragement of Literature," seemed a proper section to retain; and that section the committee was asked in several particulars to modify. We modified it by inserting a reference to physical education that has become prominent at the present day, but was not so at the time the Constitution was written. We further modified it by a reference to citizenship, to which, although now regarded as so important, there was no direct reference in the Constitution.

The clause which has seemed to receive the most criticism, beginning at the bottom of the third page: "To this end the Legislature shall have power to make such provision by taxation or otherwise", was a clause which was presented to the committee by the Board of Education, which unanimously requested that we should put that clause, or something similar to it, into the Constitution.

Now, the reason of this was not in any way sentimental. It was for two purposes, as I understand it. First, there was the reference to taxation. Now, it has been a disputed point in this Commonwealth whether a mill tax, which has been adopted in some States, and which has been suggested here for purposes of public education, would be constitutional. Probably it would be; but the Board of Education said that it had been doubted, and they wished that the power should be undisputed, as they thought in the years to come there might be need of such a tax and it was well to have the Legislature have the power to adopt it if, in the future, it seemed wise so to do. And in the second place, they desired to have a reference in the Constitution to a system of education. They deemed it of importance because, apparently, when the Constitution was drawn such a thing as a State system of education did not exist. There was no reference to any such thing in the Constitution, and they thought it desirable, in view of possible legislation to keep abreast of modern views of education, that these provisions should be inserted. For those purposes we put in this clause.

Now, I think, Mr. President, that if the gentlemen will read carefully the whole they will see that it does not mean what apparently people have thought it did mean. Let us read it: "To this end the Legislature shall have power to make such provision by taxation or otherwise as will, in conjunction with the local agencies and institutions above enumerated, insure a complete and efficient system of education."

Now, that does not mean that appropriations shall be made for the local agencies and institutions. It simply means that taxation shall be allowed for the complete system of State education; and that in considering that system in an old Commonwealth like Massachusetts they should consider the existing institutions and not duplicate them. There is no provision that the taxation shall be for the "local agencies and institutions above enumerated"; but in consistency with them and in consideration of them, the Board of Education may tax for purposes of public education. That is a perfectly fair and reasonable interpretation. It was the interpretation put upon it by the Board of Education and by the committee.

The committee, however, has no desire to insist upon its interpretation, if there is any doubt about it. It is perfectly willing to have any amendment made which does away with any inconsistency with the anti-aid amendment. And a few words certainly will do that.

I do not see, Mr. President, that there is anything in this resolution which is in the least degree inconsistent with or which interferes in any way with the anti-aid amendment; unless it comes by the order of passage of amendments, and that certainly could be taken care of easily.

It does seem to me, Mr. President, that it is desirable that the substance of this resolution should be passed: First, to omit those two paragraphs which are wholly unnecessary; and, secondly, to put in these references desired by the Board of Education in order to give the Legislature ample power to keep our system of education in the future abreast with modern times.

Mr. PELLETIER: I should like to ask the gentleman why that provision of the present Constitution appearing on page 61, being chapter 5, section 1, article 3, reading as follows: "Provided, that nothing herein shall be construed to prevent the Legislature of this Commonwealth from making such alterations in the government of the said university as shall be conducive to its advantage, and the interest of the republic of letters, in as full a manner as might have been done by the Legislature of the late Province of the Massachusetts Bay," — why that was struck out?

Mr. WELLMAN: I already have explained that, after going over this with the president of Harvard University, we could find no use for it. The gentleman will notice that in the Constitution a very specific form of government of Harvard College was provided, and then follows the provision to which he refers. Long since, that original specific form of government of Harvard College was overthrown by legislation, so that there is no need at the present day of giving opportunity to overthrow again. If this is struck out, the government of Harvard College rests to-day solely upon the statute and upon the Constitution; it can be modified at any time by the Legislature, just as can the government of any other college. That is the understanding the committee has of that matter.

Mr. LOMASNEY: Did I understand the gentleman to say we had no State system of education in Massachusetts?

Mr. WELLMAN: At the time the Constitution was adopted, as I understand the matter, there was nothing which, at the present day, would be called a "system of education". A system of education, in the sense in which that phrase is used at the present day, is entirely a growth of later times. There might be said to be a system in Massachusetts, but not in the sense in which it exists in many other States; and the Constitution as at present drawn nowhere recognizes anything like a system of education as do the Constitutions of many other States.

Mr. LOMASNEY: I repeat the question. Do I understand the gentleman to say we have no State system of education here?

Mr. WELLMAN: I think I have answered that question as completely as I can.

Mr. LOMASNEY: I should like to ask the gentleman what our Board of Education has been doing. How have we been getting our children educated in the common and grammar schools, in the high schools and colleges, if we have no system of education? And what is the matter with the present system, that he wants to change it without giving our citizens a hearing?

Mr. WELLMAN: I have no desire, nor has the committee any desire, to change anything without a hearing. The Board of Education, as I understand it, has gone forward under the present Constitution and has done what it could to build up a system of education. It thinks that it should be freer in the future to ask for legislation which is needed if a system of education were recognized in the Constitution. This never would be done, never could be done, Mr. President, without a full hearing. The amendment simply would empower the Legislature, if it thought wise, to adopt certain measures which it might not be able to adopt at the present time.

Mr. LOMASNEY: Does the gentleman who was just speaking remember the attempt of the gentleman from Newton (Mr. Powers) to put into the anti-aid measure an amendment giving the Board of Education control over the school-committees, and how that matter was defeated by the Convention?

Mr. WELLMAN: I remember that very well. That same proposition was brought before the committee on Education, and it decided not to report it. But it did decide to report what is here, and it believes this provision to be safe and wise.

Mr. LOMASNEY: Why did not the committee on Taxation consider this taxation question, rather than the committee on Education?

Mr. WELLMAN: The committee on Education considered this question because it was given to the committee on Education to consider.

Mr. GOOD of Cambridge: I should like to ask the gentleman from Topsfield if, in the event of resolution No. 309 passing, it would not act as a lever to forestall any attempt which might be made at some future time to establish a State University, or if it would not act as a lever to forestall any attempt which might be made by the Commonwealth to take over by absorption Harvard College?

Mr. WELLMAN: I do not think I quite understand the question. Does the gentleman think that the effect of these words would be to favor or to oppose a State University? I do not understand there is

anything in this language which deals with that question one way or the other, or attempts to touch it in one way or another.

Mr. O'Connell of Boston: I desire to call to the attention of the Convention at this time a rather notable contribution to this discussion about aid to denominational or sectarian schools. It is from the pen of a very able citizen of this State, a non-Catholic, — Mr. Ralph Adams Cram, — at present professor of architecture in the Massachusetts Institute of Technology; one of the architects of the Protestant Cathedral of St. John the Divine, New York City, one of the architects of the United States Military Academy at West Point, and a notable contributor to literature and the arts for the last ten or fifteen years, not only in this country, but in Europe as well. The letter is somewhat long, but I think it is interesting enough to warrant that I read it here in full. It is taken from the Boston Transcript, June 22 last, and reads as follows:

To the Editor of the Transcript:

Between the intricate cross-currents of political expediency on the one hand and cynical bigotry on the other there is a good chance that a clause may be written into the Constitution of the Commonwealth prohibiting any form of State aid to schools not absolutely and exclusively under civil and secular control. Nothing worse could happen. I am not a Roman Catholic, therefore I cannot be accused of ulterior motives when I say that I believe every Catholic parochial school, and every private school, whether denominational or not, should be able to claim, and should receive State support in exact proportion to its number of pupils, and on the same financial basis as the free public schools of the State, provided only that the educational standards of any private school receiving such support should be maintained at a level at least equal to that of the public schools.

I am perfectly well aware of the fact that this statement will invoke more opposition than any other that could possibly be made. There is a theory, generally held, that the free, secularized, State-controlled public school is the chief bulwark of what are termed (I know not why) "our liberties," and that any school under what is known as "denominational" control is a menace, particularly if this particular control happens to be Roman Catholic. This is a superstition. Of course it is true that the chief governing impulses to-day are superstitions of one sort or another, and not all superstitions are bad; some are beneficial; but this one is wholly bad.

The most ominous fact to-day is not the menace of Prussianism, or the looming danger of Socialistic "Internationalism," or even the inevitable and proximate supremacy of a false democracy of method over the true democracy of ideals; it is the universal deficiency in human character, as compared with certain past periods, as this showed itself in the thirty years just preceding the war; a deficiency that is only being made good to a certain extent amongst the soldiers at the front and the women and workers at home, by the abnormal stimulus of an unparalleled war, but thus far is showing itself little enough amongst those who have in their hands the direction of the war, whether military, civil or industrial.

Character, the sole and supreme object of education (*pace* Dr. Abraham Flexner!), was a sadly deficient quantity amongst men in all categories of life, and in all countries, from anywhere about 1890 on to the outbreak of the war. The fact was obscured by an insane material success and an equally insane development along the lines of applied science. Moreover, we were not interested in character, but in "efficiency", in "putting it over" and in "getting results," all of which we achieved to admiration, or thought we did, until the shock of war, determined by those who had done better than we along these same lines, showed us our mistake. The war was of course inevitable, and its chief object (divine, not human) is to restore the balance by creating character anew after modernism has permitted it to lapse.

Of course this degeneration in human character is due to a complex of many causes, but one of these is certainly our contemporary system of education, which began its evil course with secularization, went on to "free electives", continued into utilitarianism and "vocational training," soared to new heights in the condemnation of the classics and of cultural training, and now approaches its apotheosis under the ægis of the Rockefeller Foundation. Modern education, cut off from definite and dogmatic religious influence, metamorphosed into a farago of superficial eclecti-

cism, debased to the level of utilitarian expediency, subject to the tergiversations of "experts" and to incarnations of the empirical and doctrinaire, has failed to justify itself, even so far as attainment of the peculiar objects it set for itself is concerned, while it has played a large part in the present betrayal of civilization, through the lowering of character, the elimination of leadership and the dominance of the unfit.

Education, considered as the constructive force for the building up of character, is completely ineffective unless it is dominated by definite and constant religious direction and influence. It is also a failure if it becomes a kind of experimental laboratory for the ingenious activities of jejune specialists in pedagogical science. There are still many who know this is so, and if they believe it strongly enough, and have a sufficient sense of duty to their children and to society (or if like myself they have had twelve years' personal experience in public schools, and nowhere else), they are ready to pay taxes to support public schools they do not use, and large sums for tuition in the private schools, or for the support of the parochial schools they do use.

In allowing them to do this the State works an injustice. Neither legislation nor administration in political matters, municipal, State or National, during the last thirty years, has been wholly of a nature to give men a blind and reverent confidence in the claim of the State that all children should be handed over to its Board of Education, to be schooled and trained and developed under their complete and arbitrary direction, along such lines, and in accordance with such principles, as they see fit to determine. I am not attacking the State educational authorities; most of those I know, both corporately and individually, are conscientious and earnest and sincere. I am not giving a blanket vote of confidence to the private schools and parochial schools I know, for all of them fail in certain directions, and already many of them are vitiated by their effort to follow the popular lines in vogue in the public schools. What I am doing is asserting that the principle of secularized, mechanized, State controlled education is a mistaken one, and that the State has neither the right to impose this on parents against their will, or to compel those who think differently to pay double for the education of their children.

Instead of making this injustice permanent by intruding in the Constitution of Massachusetts such a clause as Mr. Lomasney has offered, or such a one as may be expected from "The Luther of Somerville" (if that is his correct title), it would be far more just and righteous, and infinitely more for the benefit of society, if the Constitutional Convention would provide in the new organic law that any school, private, parochial, or "denominational," that maintained its educational standards at a level, certified by the State Board of Education to be equal to that of the corresponding grade of public school, might claim and receive, from the State, financial support in proportion to its number of pupils, and equal to that expended, *pro rata*, on the children in the public schools of the State.

As a professor in a technical institution where I come in contact with upwards of two hundred young men in my own department in the course of a year, I can say that the products of the private schools, and specifically of the Roman Catholic parochial schools and colleges, compare at least favorably with their fellows of a different educational experience. This is true of character, as well as I can judge it in three years of personal acquaintance. When it comes to a question of clear, constructive thinking and clean-cut, incisive expression, the products of the parochial schools generally stand first.

It is, I think, about time we cut ourselves loose from the religious and educational superstitions of the nineteenth century and determined these matters on the basis of justice, righteousness and the testimony of incontrovertible results.

RALPH ADAMS CRAM.

I call this to the attention of this Convention in order that we may realize that outside of the Convention there are men of standing and thought who are giving this subject deep consideration, and that in our very desirable impulse to agree with each other and have nothing inharmonious with the Convention we may be overreaching and we may fail in doing the thing that we all want to do. Personally I have never mixed up in any kind of a religious controversy, and from my present angle of view I expect to follow that course always. I do hope, however, that this Convention will not go on record as penalizing any denomination, whether it is Protestant or Catholic, Jew or Mohamme-

dan or any other, by declaring that if they teach God in their best way, the Commonwealth of Massachusetts is not going to support them if at any time they may need support. It would be a very unworthy thing for this Convention to go on record by suggesting any law which would result in crossing out the name of God and Christ and religion from our school-books. The thought of God was uppermost in the minds of the Pilgrims as they left the Mayflower and stepped on Plymouth Rock, and in every great movement in Massachusetts the belief in God has been openly professed. Massachusetts has grown great and strong and mighty by professing her trust in God, and we in this year 1917, with the terrible calamity oppressing the world, in the Titanic struggle of materialism now going on in Europe, should be the last to take any step that would suggest a want of trust in Almighty God. Remember, gentlemen, we are suggesting laws that are to govern our children and our children's children, and nothing should leave our hands that would in any way suggest to them that the teaching of God is to be penalized.

Mr. WEBSTER of Haverhill: I realize that this is a somewhat delicate subject to handle, no matter how fairly it be approached or with what breadth of mind proposed. It is somewhat like touching a prickly pear; you are apt to find thorns in your fingers in spite of all the care you may exercise. Yet, sir, such is my confidence in the good feeling, the broad common-sense and breadth of sympathy that all members of whatever faith and belief have exhibited in our deliberations here, that I feel that we may speak of this frankly. Even if some of us should take a good-natured "slam" at another, I am sure it will be taken in the right spirit.

Now, sir, when first my attention was called in this morning's session to this matter, I turned to document No. 309 and looked it over. My first impression was that it was an undesirable proposition, and I hoped that the Convention, in its good judgment, would submerge it deeper than ever plummet sounded. I am not quite sure, sir, that I have reconsidered that view; it may be possible that amendments will so modify this matter that it will prove acceptable to me.

I want, sir, to call the attention of members, first, to this first paragraph. Now, sir, in my poor opinion the initial paragraph of this measure is vague, flabby, irrational, in its rhetoric and its reasoning. I object strenuously to it in its present form, sir. We see here:

many persons of great eminence have, by the blessing of God, been initiated in those arts and sciences, which qualified them for public employments, both in church and State: and whereas the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, —

Now, sir, far be it from me, and I hope I shall convey the impression to no honorable member that I am seeking in any way to belittle the importance of religious belief in the lives of men. I seek not to do that. If there is anything we should respect it is the religious beliefs of our fellow-men. But let me say, sir, the spear of science knows no brother, and the arts and sciences play no favorites in the field of religious belief.

. . . the encouragement of arts and sciences, and all good literature, tends to the honor of God, the advantage of the Christian religion, . . .

Among "good literature" would not the authors of this draft include

the Jewish scriptures, the Old Testament? Why, I always have supposed that the Old Testament was pretty good literature! I am laboring, perhaps, under a mistake, as the committee may be able to convince me. I even have devoted a few hours of my life to the study of it. It "tends to . . . the advantage of the Christian religion."

Now, sir, in my own district I have a certain number of constituents, — not a predominating number, not a sufficient number so that I should fear their displeasure for any political reason, — but I have a certain number who are not Christians at all. From my observation and acquaintance with them they are very well-ordered, industrious, law-abiding, good citizens. Now, sir, I object, will object, to the inclusion of any phrase or mention in the fundamental law of the Commonwealth which shall seem to discriminate as between the religious beliefs of those who make up the citizenship of the Commonwealth. I say it is unfair and unjust. The time has come when we should declare boldly that we have got together as Catholics and Protestants here on a common ground of common-sense. We are not singing "Croppies lie down!" or "The Battle of Ross" or talking about what Oliver Cromwell and Sir Phelim O'Neil did. That was done three hundred years ago. They are doing worse things in Europe to-day than ever they did before.

Now let us get together on this. We have got together finely on one fundamental proposition, and it is an inspiring thing to think how splendidly the common-sense of this body triumphed over the prejudice and the bigotry of the past. Now, sir, let us go the limit and eliminate from the fundamental law all reference to specific faith which, by any possibility, can give offence.

Why, my boy in school in the city of Haverhill sat in the schoolroom with Jewish boys. It did not hurt him any, — those boys went to the public school. Now, I must say that if I honestly believed that the eternal salvation of my children's souls depended upon their having certain religious teaching in school every day, and if I did not think the church and the Sunday-school and the influence of the home were sufficient to bring them along the line that I wanted, then, sir, I should feel that I could not spend my money any more gratefully for any purpose. And I should not ask anybody to be taxed to help me out on the job. I should feel really offended if they suggested assisting me. [Applause.]

I come now to a specific mention of the situation which is outlined in this proposition. Sir, for Harvard College, as an educational institution, I have the highest respect. [Applause.] I wish I had been so fortunate as to have gone there. I wish I could have gone through college. The United States army was my college. The years that many of you spent in preparatory school and college, in my case were spent in the forefront of the struggle in a world of men. Harvard College, I repeat, as an educational institution, claims, and always must claim, my respect and highest regard. But there are two sides to the shield, and I want to turn the escutcheon.

In the year 1913, sir, if I may resurrect a little bit of political history, a warm struggle was renewed here, — it had been attempted several years before, — to reconstruct the personnel of the State Board of Health, a body which I, upon the floor of the House here, had the privilege of characterizing as a "monumental aggregation of

senile dementia." [Laughter.] I repeat that phrase, and add the assertion that at that time it was abundantly justified. Now, sir, at that time the chairman of the State Board of Health was a director or trustee, whatever you call it, of Harvard College. When that bill came into the House, we had twenty-five or thirty votes, a majority of votes, in favor of that proposition. Before the final vote on the third reading came, those men drifted away, and drifted away. I was talking one morning with an enthusiastic young man from the western part of the State who had been an enthusiastic proponent of the legislation designed to reorganize the State Board of Health, and as I talked with him about what we should do when it came to a vote I noticed that his face wore an anxious look. Finally he said: "Webster, I have got to back down." I asked: "What do you mean?" Said he: "It's this way. The president of the bank in my town is a warm friend and supporter of mine; he is a powerful man up there; he has done a lot for me, he can make or break me; and his bank has got a lot of Harvard College money that is deposited there, and I have got to vote the other way." Now, Mr. President, there is the other side of the shield. I say again, for Harvard College, or any other educational institution, I have the highest respect, and I shall do anything that I can to help them as long as they do not overstep the bounds of their educational activities. But I object to this political meddling by any great, powerful interest. Why, when we gave them a million dollars, — it came in installments, $10,000 a year, — for this poor old tax-ridden Commonwealth to offer Harvard College that sum was just about as sensible as it would be for me to walk up to John Rockefeller and offer to lend him a quarter. Now, if this thing is going through at all, I want to see it abundantly safeguarded. But I think the safest thing to do will be to defeat it, erase it altogether. [Applause.]

Mr. John J. Mansfield of Boston moved that the resolution be amended as follows:

In section 1, by striking out, in lines 1, 2, and 3, the words "our wise and pious ancestors, so early as the year one thousand six hundred and thirty-six, laid the foundation of Harvard College, and whereas"; by striking out, in line 3, the word "later"; by striking out, in line 5, the word "other"; and by striking out, in lines 14 and 15, the words "the President and Fellows of Harvard College, in their corporate capacity, and".

In section 2, by striking out, in line 2, the word "being", and inserting in place thereof the word "are"; by striking out, in lines 9 and 10, the words "the university at Cambridge,"; by striking out, in line 10, the word "other"; by striking out, in line 11, the word "public", and inserting in place thereof the word "and"; by striking out, in the same line, the words "and grammar schools"; and by inserting before the word "towns", in line 12, the words "cities and".

Mr. Bauer of Lynn moved the previous question.

Mr. Clapp of Lexington: It seems to me that while this general subject is not one of very great importance yet it is well enough, for historical and sentimental reasons, to preserve in the Constitution this reference to Harvard College, and this declaration of the fact that education and literature are something which should receive the fostering care of the Commonwealth.

I recognize, however, that as the resolution stands there is a possible conflict between the concluding portion of section 2 and the anti-aid

amendment which the Convention already has adopted. To my mind there is a very simple, easy way in which to remove that possible conflict; and it is for the purpose of making it certain that there is no conflict that I now offer a very simple amendment. I move, sir, that the resolution be amended in section 2, by inserting after the word "shall", in the last sentence, the words ", save as otherwise and elsewhere provided in the Constitution,".

That, gentlemen, removes the possible conflict altogether.

Mr. CUMMINGS of Fall River: I hope the previous question will not be ordered. There are some things to be said about this resolution, especially as it affects the anti-aid amendment, which have not yet been said.

A situation has been created by the introduction of this document, this resolution, and the discussion of it, that makes it necessary for this Convention to consider further whether, in the light of what has happened to-day, we have not now stated plainly to the Supreme Judicial Court and to the people of this Commonwealth that the Legislature cannot exempt any of the institutions that heretofore have been exempt from taxation. In the few minutes allowed me to offer my reasons against the previous question, I cannot state the matter that is in my mind. I wish to say that if the previous question is not ordered I shall state briefly, without unnecessary repetition, the objections that I think are now raised to the passage of either or both measures.

Mr. UNDERHILL of Somerville: I trust the previous question will not be ordered at this time. If the members of the Convention want to jeopardize this amendment before the people, whenever it does go before the people, they will vote for the previous question at this time, before some of our members have had an opportunity to offer amendments which they desire to offer, and before some of our members who feel very strongly and very deeply in this matter have had a chance to express themselves. It is an unfair proposition to shut off debate on this question which touches every member of the Convention intimately, and I hope the previous question will not prevail.

Mr. BRACKETT of Arlington: I rise simply to join with the two previous speakers, the gentleman from Fall River and the gentleman from Somerville, in protesting against the previous question now being ordered. I do not do this because I have any intention of speaking upon the merits of this proposition; but gentlemen who do desire to speak should have that opportunity, and it would be for the benefit of the Convention to hear them.

Therefore I trust that the Convention will vote down the motion for the previous question.

Mr. WELLMAN: I rise simply to state that I am sure the members of the committee have no desire to shut off debate or to limit any reasonable criticism, but we wish the best thing that can be gathered from this report.

Mr. GEORGE of Haverhill: This is rather a peculiar situation. It seems to me that the previous question ought not to be ordered at this time. Here we have a committee that have considered this proposition and made a report. Some weeks afterwards the committee on Bill of Rights were considering a question akin to it, and they made a report. Under the rules, the report of the committee on Bill of Rights took

precedence, and everybody knows how effectively and successfully their report was accepted and the resolution was passed. Now, three weeks later, the committee on Bill of Rights, having succeeded in putting their proposal across, come in here and take out of the calendar a resolution reported by the committee on Education, put it in ahead of everything else, and then tell us how it ought to be kicked out of the window because it is an intrusion on the committee on Bill of Rights.

Now, I think the committee on Education have some rights, just as important as the committee on Bill of Rights. And while I do not discuss the merits of this question, I think at least the committee ought to have a right to make a statement about the only business that they have had before that committee, and about the only report that they will send to this Convention, without ordering the previous question at this time.

Furthermore, I should like very much to hear the gentleman from Fall River discuss this question, because I think he has given some attention to it, and I think it would be interesting to the members of this Convention. I think there are others who want to speak. Therefore I hope that the previous question will not be ordered.

The Convention refused to order the previous question, by a vote of 13 to 139.

Mr. CUMMINGS of Fall River: It is no news for this Convention to hear me say that I am opposed to the anti-aid amendment and that I shall oppose it as strenuously and as continuously as I am able to do so. And yet I should not want to have this Convention believe that in pressing my opposition I would urge any unfair argument or raise any question and support it unless I believed it had actual merit, that it was true as I stated it, and that it should influence the Convention.

When the anti-aid amendment was being considered by the Convention, previously to its engrossment, I raised the question of taxation, — that the provision of the resolution rendered it exceedingly doubtful if there could be any further exemption made by the Legislature, or any exemptions made hereafter, of any of those institutions which formerly had been exempted by the Legislature. The Constitution provides that taxation must be not only reasonable but must be proportional; and the Justices of the Supreme Judicial Court, when they were called upon to consider this question, stated that the reason why the Legislature was authorized to exempt charitable, religious, and educational institutions from taxation was because the Legislature was authorized to tax to support them, and as the Legislature had the power to tax to support those institutions it necessarily had the power to exempt the institutions from taxation. That already has been discussed; I shall not repeat it. I promise not to make any unnecessary repetitions.

Mr. ANDERSON of Newton: I wish the gentleman from Fall River would discuss that more at length; it is not clear to my mind as yet. I wish he would make it clear to the lay mind.

Mr. CUMMINGS: I did not mean when I said that I should not be guilty of unnecessary repetition that I had abandoned the question. I shall tell the Convention as clearly as I may the reason why, in the present condition of things, the court would be bound, in my humble

judgment, to say that the legislative authority to exempt educational, charitable, and religious institutions from taxation was gone; that there was no longer any authority.

When I stated it before, I deferred, as I informed you, to the opinion of gentlemen in this Convention whose opinion I always am glad to take. I did not dare, for lack of time to consider it then, to assert with any degree of confidence that the anti-aid amendment would expose these institutions to taxation. But I do say now, after reflection, and with opportunity to consider the question, that in the light of the situation now created we have declared that we do not any longer wish to be taxed to support these institutions. Now, if you will keep that fact in mind, the other fact will be easily understood and accepted. The right to exempt an institution from taxation, so that that exemption shall not be exposed to the criticism of being illegal, depends upon the right to tax to support the institution. Because we have the right to tax to support, we have the right to exempt.

Mr. ANDERSON: Are we taxed now to support the churches? If not, how can their property be exempt?

Mr. CUMMINGS: The question is a pertinent question. If I were to follow literally what the Justices of the Supreme Judicial Court said in their opinion given to the Legislature, I should have to say that there was authority to tax to support the churches. Personally, speaking not only as a delegate, but as a lawyer, I am bound to believe that that was an inadvertence, and that the Justices never meant what it said. But in order fully to answer the question I shall read from the opinion, briefly.

Mr. EDWIN U. CURTIS of Boston: I should like to ask the delegate from Fall River if, after his statement about taxation, at the close of debate on the anti-aid amendment, he requested me to give him certain decisions on the subject.

Mr. CUMMINGS: I recall what the gentleman states took place.

Mr. CURTIS: I should like to ask the delegate from Fall River if he has read those cases.

Mr. CUMMINGS: I have not read the cases. I had the cases brought to my office; I had them considered by others. My duties here do not give me the opportunity that I had formerly to read cases; I have to leave that work to younger, brighter, and abler minds; and so I had to take the advice and opinion of others that those decisions conformed to what the chairman of the anti-aid amendment committee said they conformed to, and that they were not in conflict with his views. Mr. President, does that answer the gentleman's question?

Mr. CURTIS: I thank the gentleman very much for his courteous and straight answer.

Mr. CUMMINGS: I was about to read for the Convention the statement in the opinion of the Justices, which may clear up the fog that is created by this question of taxation of charitable, religious, and educational institutions. I assume, without knowing, that the opinion was written by former Chief Justice Knowlton, as I understand that the opinions on constitutional questions generally are written by the Chief Justice, and he was the Chief Justice at that time. I think it will be accepted without urging, without any argument, that there was no abler lawyer or exponent or expounder of the Constitution in the Commonwealth than the gentleman whose name I have mentioned.

Here is what he says, — it is a short paragraph and perhaps it will meet the objection of the gentleman from Newton (Mr. Anderson), or answer his question, rather than meet his objection. I am not sure but it will meet his objection:

There are other provisions under which the Legislature has acted, relative to particular subjects which involve taxation or exemption from taxation. The third article of the Declaration of Rights, and Article XI of the Amendments which was substituted for it, recognize the importance of the public worship of God, and of instruction in piety, religion and morality, as promoting the happiness and prosperity of a people and the security of a republican government. Accordingly, taxation for these purposes is authorized. (195 Mass. 607, at 608).

I admit that is a pretty broad statement. If I was asked the question, notwithstanding that statement, as to whether there was power in the Legislature to tax to support religion, I should say no, there was not.

Mr. Anderson of Newton sought recognition.

Mr. CUMMINGS: Will the gentleman pardon me until I finish reading this excerpt? And I ask especially his attention to the next few lines:

As taxation to procure property for such uses is permitted, exemption of property so procured is legitimate, under the special provisions of the Constitution touching this subject. We have also constitutional requirements for the encouragement of literature and science, the diffusion of education among the people, and the promotion of "general benevolence, public and private charity" and other kindred virtues. Const. Mass. c. 5, sec. 2. As taxation of the people may be imposed for these objects, property used for literary, educational, benevolent, charitable or scientific purposes may well be exempted from taxation.

Now I will answer the gentleman's question, Mr. President.

Mr. ANDERSON of Newton: As I hear the opinion read by the eminent gentleman from Fall River, I notice that the Supreme Judicial Court says that because, as I understand it, taxation is allowed for these institutions, accordingly exemption from taxation may be had. But does the Supreme Judicial Court say there at any point that that is the only basis of exemption from taxation?

Mr. CUMMINGS: That is the only basis given by the Justices of the Supreme Judicial Court. No, they say what I read, and no more. They have not, perhaps, foreclosed the subject so that they may not hereafter give some other reason. That is the reason that was given.

Mr. ANDERSON: As I understand it, — making a statement first in order to put the question, — as I understand it, the Justices of the Supreme Judicial Court were discussing a certain question from a certain angle, and on the basis of that question and from that angle they make the statement that exemption from taxation may be had on the ground of the taxation of these institutions. But they are not discussing the whole question of the exemption from taxation; and I want to ask the gentleman if it is not a fact that exemption from taxation can be had also on the ground that such institutions are contributing to the public good.

Mr. CUMMINGS: Under our Constitution, no. That is nothing more than my opinion. Our Constitution requires that the taxes levied on property shall be reasonable and proportional. The only reason that can be given for taking this class of property to which reference has been made, namely, charitable, religious, and educational institutions, out of the taxable zone, is because it would be ridiculous on one hand

to tax to support them, and on the other hand to tax to take away from them. It is self-evident that as our Constitution stands there is no other ground for exempting these institutions from taxation than the ground which the Chief Justice gave. Restating it at the hazard of being a little tiresome: Because you have the power to take to make the building, you are not called upon to take to destroy the building. That proposition runs through all taxation; that is the ground of exemption.

Mr. ANDERSON: And I suppose still that the gentleman does not know what to do with the exemption of churches, for which we are not taxed.

Mr. CUMMINGS: I do not know whether that was intended as a question or as an expression of the gentleman's opinion. But if it was intended as a question I venture to say that the question of the taxation of churches is not now, in the light of what has happened to-day, whatever the situation might have been when the anti-aid amendment was passed to be engrossed, — in the light of the present situation, the question of whether religious institutions, including churches, are exempt to-day, or may be exempted hereafter by the Legislature, from taxation, is an open question; it is not at all certain.

Mr. BROWN of Brockton: I should like to ask the gentleman from Fall River if the anti-sectarian amendment as passed does not take away from the Supreme Judicial Court that section upon which it rested which relates to wisdom and education, and so forth, diffused among the people.

Mr. CUMMINGS: I think it did, Mr. President. That was the basis of my argument, as far as I made one, when the resolution was on its engrossing stage.

Mr. LOMASNEY of Boston: If the Convention defeats the proposition now before us, does not the argument of the gentleman fall?

Mr. CUMMINGS: No, Mr. President. On the contrary, it gives additional force to the argument in support of my opinion.

Mr. CREAMER of Lynn: I would say to the gentleman from Fall River that the committee on Taxation reported, thirteen to two, in favor of striking out the word "proportional." Now, if that should be stricken out of our Constitution would his opinion still hold?

Mr. CUMMINGS: It seems like a bold thing for me to stand here and presume to anticipate the judgment of that learned body, the Justices of the Supreme Judicial Court, in the event of a constitutional change like the one recommended by the committee on Taxation. If, however, in attempting to answer these questions I do not expose myself to too harsh criticism, I would say that if the word "proportional" is stricken out it certainly would take some of the force away from the argument that I am about to make against the perils to which these institutions are now exposed. Whether it would fully meet it or not, I do not know. Whether the word "reasonable," with the word "proportional" stricken out, would permit the Legislature to exempt certain institutions, any institutions that they decided were a benefit to the Commonwealth, I do not know. But I want to say that it would not be a political question; the Legislature's decision would not be final. It would be for the Supreme Judicial Court in the end; and what the court might say, of course I cannot anticipate.

Mr. LOMASNEY: I cannot see through this part of the gentleman's

remarks. He says, as I understand him, that if this Convention, after hearing the argument on the measure now before us, defeats it, the decision of the court might be affected. I cannot see how our action should affect the position of the court on the other matter.

Mr. CUMMINGS: I shall endeavor to make plain, as plain as I am able to make it, why the defeat of the resolution reported by the committee on Education would make it almost imperative on the court to say that the Legislature had not the power to exempt these institutions from taxation.

When the anti-aid amendment was passed certainly nothing was expressed in that measure, nothing stated, which denied the Legislature the right to tax for the support of any institution. It was not expressly stated. There is no doubt about that. For the first time, the right to tax to support at least one class of institutions has been brought before this Convention in the report of the committee on Education. I hope that is equally plain. Now, supposing that, instead of limiting it to just educational institutions, the right to tax had been declared to be in the Legislature for the support of religious, charitable and educational institutions, and we voted that down, would not that be an expression of the opinion, of the advice, of this Convention that those institutions should not be exempt from taxation? You could not tax to support them, and you declare you cannot. To restate it: If the report of the committee on Education is rejected it means this, simply, that the last paragraph, giving the Legislature authority to tax for the support of education, is denied. If that is so, then its authority to exempt is denied.

Mr. LOMASNEY: We do not deny the right to tax. We only say you shall not tax, give or use public money except for institutions under public control and superintendence, the right to do which has been determined by the Supreme Judicial Court, because they say that is the only thing you have a right to do.

Mr. CUMMINGS: I think what the gentleman means is that the committee on Bill of Rights does not deny the right to tax; and I have stated that. But if we reject the resolution offered by the committee on Education, this part of it especially, the Convention will have declared that it denies the right to tax; not only the right to apply the money, but the right to tax.

Let me read, for the enlightenment, if I may, of the Convention, the last sentence in their report. I am reading from the bottom of page 3:

> To this end the Legislature shall have power to make such provision by taxation or otherwise.

Now, supposing that we deny the Legislature that power, by refusing to pass this resolution after it has been brought before us; we have then expressly declared that the Legislature shall not have the right to tax to support. And if that is true I think it would have sufficient force with the Supreme Judicial Court to compel that court to say that the Legislature did not have the right to exempt.

Mr. LOMASNEY: If this amendment is defeated do we not then stand upon the present Constitution, which says specifically what we shall and what we shall not do?

Mr. CUMMINGS: I am afraid you do not. I am afraid that the anti-aid amendment so far modifies and controls section 2 of chapter 5 of

the Constitution that there is no longer authority for saying that we have the right to tax to support those institutions or that we have the right to tax to support any institution excepting those included in the anti-aid amendment.

Mr. ANDERSON of Newton: I want to ask the gentleman, when he makes the statement that the rejection of this resolution would take away, as I understand, the only authority that the State has to tax for the purposes of education, whether he takes into consideration the fact that, at the time the whole question was up on the anti-aid amendment, the committee which had charge of it put in a statement in reference to taxation, in which they said that they did not have in mind at all meeting this question of the exemption from taxation, that their amendment had nothing to do with that question.

I want to ask him as a lawyer whether that statement which was uncontroverted, put in at the time of the debate, would not be taken into consideration by the Justices of the Supreme Judicial Court.

Mr. CUMMINGS: In construing and interpreting a constitutional provision, as distinguished from the enactment of a statute, everything that is said in the Constitutional Convention that is preserved will be taken into consideration. Everything that is said in the debate even in legislative assemblies, where as an antecedent condition there must be passage of the resolution twice, will be taken into consideration. Undoubtedly it will be taken into consideration. But when the last expression of the Convention, which would be the controlling expression of the Convention, — if the two cannot be reconciled, when they cannot be, — is that when we were asked to authorize taxation to support educational institutions which were not wholly public we denied it, denied it by vote, there is nothing left for the court but to admit that that denial, that emphatic disapproval, condemns the proposition that you can tax to support them; and if you cannot tax to support them, you cannot exempt them. There is no escape from that.

Mr. WILLIAM H. SULLIVAN of Boston: I understand the gentleman from Fall River to say that the Supreme Judicial Court will come to the conclusion, if we refuse to pass this amendment, that we thereby say that we are not going to permit taxation for the support of education. Is it not fairer, Mr. President, to say that this Convention has refused to pass this resolution, not because it provides for taxation for education, but because it provides for taxation to support certain institutions over which we do not have control, under circumstances and in conjunction with other interests of which we do not approve? Is it not fairer to take the whole resolution, rather than one isolated sentence, and have the Supreme Judicial Court construe this amendment and say that the Convention refused, not to appropriate money for educational purposes, but that the Convention refused to permit or approve appropriations under these circumstances for private institutions?

Mr. CUMMINGS: I suppose the construction and interpretation of a statute or a constitutional amendment is practically like the construction or interpretation of a will. You read the whole instrument. And I should regret very much if anything I said induced the gentleman from Boston in the fourth division to believe that I disregarded the other provisions of the resolution reported by the committee on Education. I had them all in mind. And now, repeating his own language, that we deny the power to tax to support certain institutions,

just go one step further and ask: What certain institutions? Certain educational institutions. That is before us. If we deny that right we leave the court no ground to stand upon to justify legislation that will exempt those institutions from taxation.

Mr. HART of Cambridge: May I ask, Mr. President, whether the gentleman from Fall River has in his mind some positive suggestion or proviso which if applied to the anti-aid amendment which has been engrossed would remove the difficulties in his mind and would enable this Convention to do what it apparently desires to do, namely, to submit that amendment in an unquestionable form?

Mr. CUMMINGS: I have an amendment, which I shall offer at the proper time, to the report of the committee on Education. I have no amendment that will help the anti-aid resolution. In my humble judgment, and good-naturedly, it is incurable. [Laughter.] My attitude toward that is very well known.

Mr. LOMASNEY: I should like to ask the gentleman to define the difference between the anti-aid amendment as passed and the following, except on the question of the time when it shall become operative:

> The General Court shall make no law respecting the establishment of religion, or prohibiting the free exercise thereof, nor after the year 1925 shall the Commonwealth or any political subdivision thereof make a grant or appropriation of money or property in aid of any institution not under the exclusive control of public officers.

I should like to ask: What is the difference in principle between that and the anti-aid amendment?

Mr. CUMMINGS: The gentleman calls my attention, — and I think he will be fair enough to bear witness to the truth of what I say, — to an amendment that was drawn by a gentleman who has been referred to in this Convention to-day. That amendment was drawn at a conference at which the gentleman from Newton and myself and the other man, the author of that resolution, were present. It did not express the views of the gentleman from Newton; it did not express mine; both of us at that conference said we could not accept it. The gentleman from Newton was on the committee on Bill of Rights; I was not. And I was willing to take, and did take, that amendment, and made copies of it; one for the chairman and one for the gentleman from Boston. But I declared then that I should not offer it; that it did not express my views, and that I took no responsibility for it. And I did not offer it. It gives me the opportunity, — and I am glad the gentleman asked me the question, — it gives me the opportunity to say that when reference was made to that amendment, saying that I had adopted it, I did not adopt it at any time, and never offered it to the Convention. Beyond that, let me say, in principle it does not differ; it only at least postpones for eight years, giving breathing time to this Commonwealth to see whether or not it is right. But even at that I never offered it other than as I have said, and I ask the gentleman to say whether what I say is true or not.

Mr. LOMASNEY: If the gentleman will permit me, I want to ask another question. Did the gentleman from Harvard College, the President of Harvard College, these men who met at this club, when they were discussing this matter of taxation, did they make any reference at that meeting to this supplementary amendment? Was this supplementary amendment discussed on that occasion?

Mr. Cummings: Will the gentleman from Boston particularize and specify what he means by the "supplementary amendment"?

Mr. Lomasney: I mean the amendment that is now before us, — document No. 309. When the gentleman from Fall River had the President of Harvard College and these men at the Union Club discussing this matter, did they go into the resolution now before us as to how it applied to Harvard College, and how it affected the general proposition?

Mr. Cummings: Document 309 was not before us. And again let me say, lest I get credit for something to which I am not entitled, — although I am willing to be a peacemaker, without being a pacifist [applause], — I did not bring about that conference. And if it is not straining the patience of the Convention too much I beg leave to say that that conference, and the conference which preceded it at the Union Club, were not of my seeking or of my making. I was invited to it, as the least of those who might sit at the table, and I tried to find the last place when I got there. At that meeting I declared, as directly and plainly as I was able, the position that I took in this Convention against the anti-aid amendment, not varying it at all. In the conference which later took place, to which I was invited, — which I did not create, which I did not call, but to which I very gladly gave my consent, because, since the name of the President of Harvard College has been brought into this Convention, let me say, Mr. President, that in the conference which I had with him, in the two sessions which I had with him, I had every reason to believe, as I believe now, that he was actuated by the highest purpose, trying if possible to reach some solution of this dreadful question which threatened and threatens to tear this Commonwealth apart, — it was the highest motive, not the lowest motive, which led him to ask for a second conference, and I attended it. At that conference no mention was made of resolution No. 309; I never saw that resolution until last Wednesday morning; and I believe I should not have seen it until it came up in due course if it had not been for the letter which the distinguished gentleman from Newton (Mr. Anderson) wrote in the "Post" last Tuesday morning or last Monday morning.

Mr. Anderson of Newton: Just one thing more, to have the subject-matter perfectly plain in my mind. I want to know whether the gentleman from Fall River thinks the exemption of church property from taxation in Massachusetts to-day is unconstitutional.

Mr. Cummings: No, Mr. President, I do not think it is unconstitutional, although I think that the warrant for it is not the one that was given in the second part of the argument that I read. There is no direct authority to tax, although there seems to be some particular authority not easily defined to foster and protect.

I want to say one word more about taxation. The gentleman from Milton in the fourth division (Mr. Bryant) this morning asked if the word in the report of the committee which was also in the original constitutional provision, — "immunities", — was not sufficient to take care of the matter of taxation. I do not think it is. I do not think "immunities" ever was intended; in any event, I know of no decision in this Commonwealth or any other that says the word "immunities" means any more than such a release from certain obligations that are either definitely expressed in a charter or that have become a part of the tradition, the law, by usage, by long-continued usage, in a par-

ticular section. The word "immunities" will not mean "protection" in and of itself, unless there is something else to protect.

Mr. Brown of Brockton: I should like to ask if it is not clear that the word "immunities" appears in a sentence complete in itself, and relates to agriculture, science, and other matters and not to this subject of education in the anti-aid amendment.

Mr. Cummings: No, Mr. President, I must say I think it does not. I think it referred wholly to the legal emancipation, if I may use the word, of Harvard College and such kindred institutions from any ties or obligations that other institutions might be under where they were not expressly excepted in their charter. The provision that the gentleman refers to is in the second section of chapter 5, and not in the first.

Now, Mr. President, I have an amendment here which I will ask to submit.

Mr. John J. Cummings of Fall River moved that the resolution be amended in section 2, by striking out all after the word "enumerated", in the last sentence, and inserting in place thereof the words "promote and encourage the principles of humanity, education, general benevolence and public and private charity."

Mr. Cummings: I offer that amendment to preserve the integrity of this section, which is destroyed if it is omitted in view of the probable passage of the anti-aid or anti-sectarian amendment. That second section is the counsel, the advice, it is the treasure of wisdom that is bequeathed to us and to those who come after us by the men who made the Constitution: Foster these things; foster humanitarianism, foster general benevolence, foster public and private charity, foster education. Now, we are not going to foster them, we are going to turn away from them, unless we reaffirm our adherence to these principles by adopting this amendment. For the anti-aid amendment limits, as the gentleman from Boston said this morning, the use of public money solely for public purposes, — meaning for public institutions. If we limit it to public institutions, then these things that we were almost commanded to do we cannot do; we refuse to do.

I wish to say a word more about these private institutions because of a sentence in a letter to which I have referred heretofore, in which mention is made of the new-born zeal of Catholics for these private institutions. In my case it is not "new-born zeal". I have stood from the beginning to support these institutions that are private, — the Massachusetts Institute of Technology, the Worcester Polytechnic Institute and others; not because of their names, not because of their organization, not because of the men who are at the head of them or behind them, but because of the good, the service, that they render to the State. And I wish to say now, I never have believed that it was a good principle of human conduct to follow that, if I could not do all the good I wanted to do, I should not do any good. I do not accept that. If I cannot give to the schools, to all the schools that I think are entitled to it, I will not withhold aid from deserving schools. I do not conceal from this Convention or from the Commonwealth my conviction that some day, as the gentleman from Boston (Mr. O'Connell) read from Ralph Adams Cram's letter, Massachusetts will rejoice that the parish schools taught religion to the children at a time when their minds were impressionable.

Mr. LOMASNEY: If the gentleman believes that firmly, why does he not put in an amendment to carry it out and put his personality behind it and allow the Convention to vote upon it?

Mr. CUMMINGS: I should not have the slightest hesitation in doing that, putting that in, or any other; but the trouble about it is, it is completely overshadowed and destroyed by the anti-aid amendment. Let me say this: Whether I put it in, or the gentleman from Boston, (Mr. Lomasney), or somebody else, make no mistake, I shall support that proposition ardently, here and elsewhere. But I do not think this Commonwealth is ready for that proposition. I have said, and I believe, that in time the best thought of this State will see some way of administering these parish schools so as to make them public schools; that the fact that religion is taught will not interfere with their usefulness as public schools; that everything that is taught in the public school will be taught there. And I want to say now, to modify the statement that I made in my enthusiastic response to the gentleman's inquiry as to why I did not offer that amendment, I do not offer it for the same reason, — and I want to change that answer, — not because I do not believe in the schools, not because I do not want them helped, but because I think the time has not come when Massachusetts is ready to deal with it; and I believe it is just as inflammable as the other question that I tried to keep out of this Convention.

Now, Mr. President, I was about to say in conclusion that I did not think it was a good principle of human conduct to refuse to do good at all because you could not do all the good that you would like to do. The fact that the parish schools cannot be helped is no reason why the private schools that have been helped for a hundred years should not be helped. If the parish schools have to go for years and years without aid I shall stand where I stand now: Help the other schools and every institution, charitable or educational, that assists this Commonwealth, and we will wait until such time as an enlightened State will appreciate what is being done for the children of Massachusetts. [Applause.]

Mr. MCANARNEY of Quincy: Will the gentleman from Fall River explain to the Convention what, in his opinion, would be the legal effect of the people accepting the anti-aid amendment and also resolution No. 309, with his amendment, at the same election?

Mr. CUMMINGS: I think, in the first place, that the two amendments, if both are adopted, would have to be construed substantially according to the lines of construction given by the chairman of the anti-aid committee: That if they could not be reconciled, then both of them may fall; if they can be reconciled, then, as far as it is possible to make them workable, the provisions of both may be adopted. But my opinion is, and I believe the legal effect of the amendment is, that it destroys that provision of the anti-aid amendment which prevents granting money to private institutions. I suppose that no delegate in the Convention had the slightest doubt about my willingness to destroy as much of the anti-aid amendment as I could [laughter], and I want therefore to make it clear, in answer to the question of the gentleman from Quincy in the third division (Mr. McAnarney), that if my amendment is adopted I think what will remain of the anti-aid amendment is this, — and I regret that a part of it will remain [laughter], — that is, the eighteenth amendment. I regret that it is offered again to our people. It has a bad

history, sir. It came in the troublous times, — the Know Nothing days. It came again and was rejected, but again it was offered. It is the only piece of Know Nothingism that is in the Constitution that irritates. We had another one, but it was repealed. This has a bad history, as I say. I regret it is here. It is in the Constitution, let it stay there; but do not ask the people to reaffirm it who do not want it. To-day or to-morrow I may appeal to my fellow-citizens, as I appeal to this Convention, to consider whether or not at some future time they must not frame some legislation by which they can deal with the parish schools; but if I vote for this amendment I deny myself the right to appeal to anybody, because they may say: "Why, you voted for this; do not raise the question again." So the eighteenth amendment, I say, should not be offered to them the second time.

But further than that, what would be left of the anti-aid amendment is this: First, the paraphrase of the first article of amendment of the Federal Constitution, providing for religious freedom; second, the eighteenth amendment; third, a distinct, absolute prohibition of legislative grants of money to any religious institution for the support of that institution. That was the only thing upon which the Justices of the Supreme Judicial Court differed, — as to whether or not that was necessary. That will remain. And you will have this, — you will have three declarations, all of them of importance: First, religious freedom; second, the maintenance of the public school system in its integrity; third, the prohibition upon the granting of public money to religious institutions. And that is all this Convention ought to ask; beyond that it should not go.

Mr. Brown of Brockton: Following the question of the gentleman from Quincy (Mr. McAnarney), I want to ask the gentleman from Fall River: Is it not possible that this Convention may send both of these resolutions to the people, bracketed, and allow the people to take which one they want?

Mr. Cummings: Of course it is possible that it may be done. I regret to say that I find many things are possible that I hoped were impossible; and among others, these. But I do not mean to reflect upon the question at all, and still less upon the gentleman who asked it. It is possible to have both submitted, and to choose the better, not to choose the worse one.

Mr. Edwin U. Curtis of Boston: If the interpretation of the gentleman from Fall River is true, as I understood him there would be a third matter left in the anti-aid amendment, namely, that you could not assist any institution that taught denominational doctrine. Is that right, Mr. Cummings?

Mr. Cummings: No.

Mr. Curtis: I want to state it just as you did.

Mr. Cummings: What would be left would be: first, — I am reading lines 9 and 10.

Mr. Curtis: I simply asked the gentleman if he did not state that one of the three things that would be left in the anti-aid amendment was that section that no appropriation of money should be made to any school or institution where any denominational doctrine was taught; did he state that as one of the things to be left?

Mr. Cummings: No, I did not mean that, Mr. President. I did not mean that. I meant, and I had in mind, a provision in the amend-

ment, as I recalled it, which forbade grants of public money by the Legislature for religious institutions. And I did not mean to include in "religious institutions" schools, ordinary schools, where the catechism or prayers are taught.

Mr. CURTIS: The gentleman from Fall River is a personal friend of mine. I regard his great legal abilities, and I give him credit for his high standing at the bar. I also give him credit for being what we used to term, in ordinary parlance, a "last ditch fighter." He brought up all these arguments on the last day that we argued the anti-aid amendment, and threw into the argument of that day the question of church taxation. I think you can all remember my reply to him at that time. Did you notice his answer to me to-day, when I asked him: "Have you looked at the citations which I gave you in regard to church taxation?" He replied that he had not, but others in his office had, and they said that they sustained my contention. Now, gentlemen, that disposes of the whole argument. I have not the citations with me. I had them in my papers. I also had a brief on that question; and I say to you now, without any fear of contradiction, that there is nothing in the point raised so far as taxation of church property is concerned. But I do say, his answer left this question open in regard to the measure now before us, that if that amendment is passed and the anti-aid amendment is finally accepted by the people, the only colleges, the only institutions of higher learning, that will be cut out are the Catholic colleges; and that he has advocated this result if he advocates the amendment that is offered to that resolution. Because if you will read these words "and other colleges, universities, and institutions of higher education," and then go back to the anti-aid amendment, where they say those words will stand that no appropriation shall be made to any college or university where any denominational doctrine is taught, it would not only cut out Catholic colleges, but would cut out every parochial school forever, — the very thing that he is advocating now.

Mr. CUMMINGS: First let me say, Mr. President, in connection with the authorities that the gentleman from Boston offered me: they were not Massachusetts decisions. There is no Massachusetts authority in conflict with what I have said. They were Iowa decisions. I do not mean to be disrespectful to the Iowa court, but we have not reached the place where we accept the Iowa conception of our Constitution. And there was nothing in them, as I recall, that would change my opinion, although they were in conflict with what I expressed at that time.

But the situation is entirely changed, so that the Iowa decision, first of all, is not binding, and secondly let me say that the new situation is not dealt with by either of the cases that were cited. In the next place, Mr. President, let me say, — the time for adjournment is at hand, — if my amendment excludes Boston College, or any other college that is doing good work, then I want to reamend it, and I will support a reamendment; for I want to treat all these colleges alike.

Mr. ANDERSON of Newton: May I ask the gentleman from Fall River one final question? I should like to ask him whether, if the Convention adopts resolution No. 309, he is sure that the eighteenth amendment to the Constitution will remain intact.

Mr. CUMMINGS: I think the eighteenth amendment would not be affected if resolution No. 309 were adopted. I think it still would remain in effect. I am answering the question without any great consideration, but I see no reason why any other view should be taken than that.

The debate on the resolution was continued Wednesday, October 3.

Mr. Frederick L. Anderson of Newton moved that the resolution be amended in section 1, by inserting after the word "enjoy," in the last line but one, the words ", save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution,"; and in section 2, by striking out the last sentence and inserting in place thereof the following:

To this end the Legislature shall have the power to exempt from taxation property used for charitable, educational and religious purposes.

The same gentleman moved that the resolution be amended by striking out the article of amendment and substituting the following:

The Legislature shall continue to have the power to exempt from taxation property used for charitable, benevolent, literary, educational, scientific and religious purposes.

Mr. BENNETT of Saugus: I should like to understand this amendment better. The gentlemen with whom I have come in contact, a great many of them, seem to decide upon this matter as to its influence upon the amendment reported by the committee on Bill of Rights, — the anti-sectarian amendment, so called. Now, Mr. President, the town which I have the honor to represent in this Convention is one of many towns in Massachusetts which have very little money and an abundance of children. I should say in the 12,000 inhabitants there is not a single rich man, — not one in the town of 12,000 inhabitants, — and nearly all of the inhabitants are devoting all their time to keeping the wolf from the door. They are essentially well behaved. They cannot be anything else, because they are engaged in the fight for livelihood. Now along come various authorities. It is an unusual day when there is not somebody out there from the State House ordering us to do something and providing no money for the purpose. A man comes around and says: "The fire department is not right. Spend $10,000 and remodel it." Somebody else comes around and says: "The sealers of weights and measures are not doing right, therefore spend" so much more money, "provide them quarters and provide things with which they can operate." Then numbers of men come out from the Board of Education, and tell us we must do precisely what Brookline does in regard to all sorts of fads, — and we have no money for the purpose. Our rate of taxation is $26.30 on the thousand. The valuation is so high that the tax which I pay amounts to about $1,500 a year and keeps my nose to the grindstone all the time, and if I had the same property located in Topsfield or other towns around there it would be but $400 a year.

Now, Mr. President, we want to know what the State is going to do about these conditions that have been brought about by great sociological changes. When I was a boy and lived in South Malden and went to school in Chelsea we had in Chelsea and South Malden the greatest variety of business men, oftentimes; and they lived on the same streets with the shoemakers and grocers, the man who worked on the street, who worked as a bookkeeper and what not, and wealth was distributed where the children were. Now the rich and the poor

are segregated, more so than the colored people and the whites down south. The rich are in Brookline and Nahant, in Topsfield, in Hamilton, in Manchester and Winchester. The poor are in Chelsea, in Everett, in Saugus, to a very large extent in Lynn, and I might name Clinton, and I might name fifty or a hundred towns like that. Now, if this amendment to the Constitution has got anything in here permitting steps in the direction of a better distribution of the expense of education it is worth considering, and it is very much worth considering. The chairman of the committee on Education yesterday told us, as I understood him, that the last phrase in this measure was put in there at the suggestion of the supporters of what is called the mill tax. I think I understood him correctly. If that be so, then I suppose it is true that there was not sufficient constitutional provision for this distribution of taxes before. If there is not sufficient constitutional provision then this is well worth considering.

And now I am going to stand here, Mr. President, and say that this Convention is dominated by four factions, who care for nothing else except their particular faction: The A. P. A. faction [laughter], — I have got to give it a name, — the Roman Catholic faction, the extreme radical faction, and an extreme conservative faction. This Convention is dominated by those four factions, and nothing of any importance can get a hearing except by the approval of one or two of those factions acting together. And as to this amendment proposed here, — what is the word that has been passed around? "Oh, don't bother with it. Kill it. Kill it." It is like what the ex-Governor said about matters in the Senate: "Don't bother with it. Kill it," because it is supposed in some way to be adverse to the non-sectarian amendment. If it is, if there is some merit in this proposition, why do we not consider it? We are not here for the purpose of acting upon these three or four big propositions; we are here for the purpose of revising the Constitution. One of the strongest arguments made in favor of the non-sectarian amendment was by a gentleman from Newton in the first division, who got up here and said something about Massachusetts following the western States in having State systems of education. Now, I say very plainly that a State system of education or further participation by the State in education does not meet the approval of some of those who have supported the non-sectarian amendment. But this matter of a better distribution of school funds is bound to come up. It is as well worthy of attention as anything that has been considered by this Convention. I think, Mr. President, that this matter ought to be understood and ought to be acted upon on its merits, — not as to whether it will injure this matter or that matter, not as to whether it is going to delay the initiative and referendum, but it ought to be acted upon on its intrinsic merits, and I hope, Mr. President, that it will be.

Mr. Winslow of Newton: As a member of the committee on Education, which has brought in this resolution, I wish to say a few words with respect to its being brought in here at this time, and, too, the way in which the present resolution was made up.

If you will refer to chapter 5 of the present Constitution you will find in the first article three sections. In the committee on Education, in consultation with the President of Harvard College, it was determined that the last two sections were absolutely obsolete; also that

the first article was without serious purport at the present time. However, it was felt by the committee, and as stated by the President of Harvard College, that it was worth while, for historic and sentimental reasons, to retain the major part of that article. It seems to me that it is not beneath the dignity nor contrary to the purposes of this Convention to retain such language as is distinctly of merit from the historic and sentimental standpoint; but I should say that the last paragraph of that first article, which seems to convey certain powers, was stated by the President of Harvard not to be of particular importance, because the general statutes contain all that is necessary with respect to those matters. It was felt, however, by the members of the committee on Education, that it was distinctly desirable that all universities and colleges within the Commonwealth should be placed upon a par, except that the greater age of Harvard University perhaps entitled it to mention. I believe, however, that it is not of serious importance whether section 1 of this resolution be included in the Constitution or not. The second section is very largely a transcript from section 2 of chapter 5, with a few changes of a single word or two, and with the addition of one sentence which was recommended by the Board of Education. If there is anything in the first part of that section which is in conflict with the anti-aid amendment I should suppose that it would have been in conflict all these years with the eighteenth amendment. Inasmuch as all the essentials of the first part of that section have been in the Constitution ever since the eighteenth amendment was adopted, and no conflict has been discovered, I see no reason why we should consider that there is at present any conflict whatever between that portion of this section and the anti-aid amendment.

The last sentence of section 2 as recommended by the committee, as has been stated repeatedly, was put in at the request of the Board of Education for the purpose of enabling the carrying out of exactly the suggestion made by my neighbor from Saugus (Mr. Bennett), namely, to take somewhat from Newton and to give to Saugus if necessary, in order that a system of education might be maintained which should be fairly uniform. That is to say, education is believed to be a distinct function of the Commonwealth, and it is believed that it is of advantage to the Commonwealth that all children of the State shall have somewhat nearly equal privileges. Therefore there may arise a situation where it shall be desirable for the State to contribute something to the education of the smaller districts, where the same privileges cannot be procured without excessive taxation. I believe that that is the purpose which is back of that provision, and I believe that it is in harmony with the action which is taken in most of the newer western States. It seems to me that the discovery of any conflict between this resolution and the anti-aid amendment is something which has come from a reading of the original Constitution, perhaps for the first time with this particular thing in view. In other words, it seems to me that any conflict which is found in this resolution with the anti-aid amendment was in the Constitution as it stands now.

This resolution deals with the educational system of the State. The committee on Education in approving this language was thinking to present a resolution which should provide proper conditions for the educational matters throughout the State, and was not aiming in any

way to counteract or overcome or oppose the anti-aid amendment, however much some members of that committee would have been glad to do so. If there is in this resolution any antagonism to the anti-aid amendment some step should be taken to correct that, because this matter is altogether too vital to the interests of the State to be set aside by so comparatively insignificant a thing as the anti-aid amendment.

The committee on Bill of Rights has presented to us a measure which has met the approval of a very large majority in this body. I understand that it is the purpose of the committee on Bill of Rights in ordering this present resolution before the Convention to press the anti-aid amendment forward so that it may go upon the ballot this fall if possible. There is one point, there is one feature about this, in which I thoroughly agree with the Bill of Rights Committee, namely, that if that measure is to meet with success at the polls it ought to be hurried through and put upon the ballot as soon as possible and with as little consideration as possible, because it seems to me that it contains within itself things which will be discovered to be more and more radical when it remains open to consideration, which will tend decidedly to prevent its adoption. With that in view, and in view of the extreme importance of the general educational features as presented in this resolution, I hope, first, that the opposition or the support of the anti-aid amendment will not result in the defeat of a good and consistent resolution, and I hope also that in the interest of the educational institutions of the State the anti-aid amendment will not be pushed forward to a consideration by the people this fall, but that time will be allowed for its full and complete consideration by the voters.

Mr. Powers of Newton: The gentleman from Saugus (Mr. Bennett) made an allusion in his remarks to the so-called anti-aid amendment, and his allusion to that is certainly very timely at this time. Some of you gentlemen will recall that I offered an amendment coming from the Board of Education, of which I am a member, authorizing the Legislature to deal with appropriations made for the support or the aid of local education. At the time I offered that amendment I was told by some of the leaders in behalf of the anti-aid amendment that there was no occasion to do so, that a resolution was coming along from the committee on Education which entirely provided the remedy which I sought through an amendment to the anti-aid resolution. I then examined this resolution, and I was satisfied that the statement was true; and I understood, as I think many others did at that time, that the members of the committee on Bill of Rights approved of this resolution. So I ceased to press the amendment which I had offered at that time, believing that this resolution would fully take care of the situation.

I am entirely in accord with what has been said by the gentleman from Newton (Mr. Winslow), that this is a most important resolution. It involves the question of education, and the question of education has been one of the most important here in Massachusetts, — quite as important as the question of religion. We always have prided ourselves upon our system of education.

While it is true that the Pilgrims, when they came to our shores, first built a meeting-house, the next building they put up was a schoolhouse, — and religion and education have gone hand in hand for more

than two centuries. Now the time has come when Massachusetts as a Commonwealth is called upon to aid these struggling communities in the education of the youth, and I am quite sure, Mr. President, that every one will agree with me there is no reason why the children of one town or one city should not have the same facilities for common school and public education as the children of any other city or town. That is to be the policy of the Commonwealth of Massachusetts if those most interested in education are permitted to carry it out.

This resolution, as I understand it, Mr. President, gives to the Legislature authority to promote public education, to give aid if it chooses to do so to different localities, and I sincerely hope that the resolution will be adopted by this Convention. It is said that there is conflict between this resolution and the resolution that was adopted by the Convention, known as the anti-sectarian resolution. If there be any conflict, that conflict ought to be cleared away. There is no reason under the sun why there should be a conflict between the question as involved in the sectarian issue and the question as involved in this issue of education. But do not vote down this resolution. If there is any danger of a conflict between the two, by which we recommend amendments that are not consistent, let us make them consistent, but at any rate let us stand here in Massachusetts for the cause of education and equal education in every part of the Commonwealth. [Applause.]

Mr. PELLETIER of Boston: What present weakness in our educational system does this resolution seek to cure?

Mr. POWERS: At the present time the Commonwealth may make appropriations for local aid of local schools. It has, however, no control over those appropriations. I think that this resolution does give the Commonwealth control over the appropriations which it makes for local uses. I trust that answers the gentleman's question.

Mr. EDWIN U. CURTIS of Boston: I should like to ask the gentleman if he does not think that the anti-aid amendment and this resolution conflict.

Mr. POWERS: The gentleman asks me whether I do not think that the two resolutions are in conflict with each other. I have not stated that. I do not know. This I do know, that if they are in conflict there is no reason why that conflict should not be cleared away. There are plenty of good lawyers in this Convention who will have no difficulty in clearing up that situation, if such situation exists.

Mr. CURTIS: As there are many good lawyers in the Convention, and you are one of them, will you attempt to clear it away before eleven o'clock to-morrow?

Mr. POWERS: I will undertake to clear it away to my own satisfaction, but the most difficult thing in the world is to satisfy certain gentlemen in this Convention that it has been cleared away. This Convention, or at least a portion of this Convention, has simply gone mad over this sectarian issue. I do not fully agree with many of them, yet I voted for the sectarian issue. But when an attempt is made to put forward something to prevent different creeds from getting in a contest with each other at the disadvantage of the cause of education, then I say it is going altogether too far. [Applause.] The fact is, Mr. President, that with sufficient education the sectarian issue would dissolve without any legislation whatever. What you need in Massachu-

setts is education, and with sufficient education these creeds would be in harmony with each other. As I stated the other day, I belong to a creed that is neutral on this question. We do not have any trouble with anybody. To us everybody looks good, whether he be Catholic or whether he be non-Catholic. In other words, we believe in the fatherhood of God and the brotherhood of man, and if these gentlemen who have been contending over this question would adopt the creed of my church, there would be no occasion for this anti-aid resolution.

Mr. CURTIS: I should like to have the gentleman, after having given me that discourse, answer my question, — whether he will attempt to remove the difficulty before to-morrow morning at eleven o'clock.

Mr. POWERS: I will do so, with the understanding that after I have given my opinion on it it will be accepted by the gentleman from Boston.

Mr. LOMASNEY of Boston: Cannot we by legislation do what the gentleman wants? In other words, when the Legislature appropriates the money cannot it designate how it shall be spent, without passing any constitutional amendment?

Mr. POWERS: In my judgment it cannot.

Mr. LOMASNEY: Do I understand the gentleman to say that if the Legislature is called upon to appropriate out of the tax levy the people's money it cannot designate how it shall be spent, by what boards or in what manner?

Mr. POWERS: Let me answer that a little more in detail and say to the gentleman from Boston that, while that question never has been adjudicated by the courts, lawyers disagree as to whether it has the right to do it or not; and so long as there is a doubt about it, it ought to be cleared by this Convention.

Mr. LOMASNEY: Does not the gentleman know that the Legislature every year provides that so much money shall go for roads, so much money for this, that and everything else? If it is appropriating the people's money out of the tax levy, where is there any court decision that says the Legislature could not designate the purposes to which it could be used when it was not in violation of any constitutional prohibition?

Mr. POWERS: The difficulty is that the local school-boards claim that whenever an appropriation is made for local purposes they have the absolute control of it. For instance, suppose the Legislature makes an appropriation to be used exclusively for the high school in some town in the Commonwealth, the local board insists that they have not the right to designate the purpose. Now, a conflict between the Board of Education and local boards is most harmful; and while such conflict exists to-day, it ought to be removed by making the question absolutely clear and giving to the Legislature full power to determine the method and the manner in which these State appropriations are to be used.

Mr. LOMASNEY: The gentleman will admit that the school-boards are creatures of the Legislature; and is not the gentleman trying to give the Board of Education control of the local school-boards in the cities and towns?

Mr. BENNETT: I want to make this part plain, if I am right. The Board of Education has power enough, and to my mind I sometimes think it has too much power. I do not know about that. But it does

not provide any funds, and the funds do not exist for the poor towns. The Board of Education comes in and tells us that we must do this because it has been successful in Brookline, or Newton, or Winchester, or some other place, and then it says we must do it in Saugus, and Webster, and Clinton, and Blackstone, and I might name fifty or a hundred towns, and they have not got any money to do that. In the days when this system of taxation was enacted the town was the unit and the people were scattered. Now my question is this, then, — I did not notice the gentleman was answering a question already, but my question would be this: Is not that the interpretation of it, not that we want the Board of Education to have more power, but that we want some method of providing funds by which the poor towns can do what they are told to do practically by the Board of Education?

Mr. POWERS: The gentleman from Saugus I think served for some seventeen years in the Legislature, and I assume he knows perfectly well that the Board of Education has no funds except through appropriations made by the Legislature. Now, the difficulty is that the Legislature in making the appropriations cannot impose the conditions upon the expenditure of the money, at least the local board so claims, and we insist that when we expend the State's money we should have the right to determine how that money is to be expended. If we are going down into Saugus and we are going to appropriate $10,000 for schools, we should have a right, in our judgment, to say how that money should be expended.

Mr. LOMASNEY: I think the gentleman did not get the point of my question. If the gentleman's ideas prevail, the Board of Education, of which he is now a member, will be in a position to control the local school-committees in all the cities and towns and compel them to conform to its views. In other words, would not the Board of Education have full control over them? Is not that what he is after?

Mr. POWERS: It is true I did not answer the question of the gentleman from Boston, because I left that to the gentleman from Saugus, understanding that he desired to answer that question. Now, it is not true that the Board of Education can use the money for any different purpose than is designated by the Legislature in making the appropriation. In other words, we are nothing but trustees of the fund, agents of the Commonwealth in expending the money under the direction of the Legislature. If the Legislature has not the right to give the direction, then of course we have no authority over the expenditure of the appropriation.

Mr. REIDY of Boston: I should like to ask the delegate if the real story is not that the Legislature has not the power to designate how the money shall be spent, but prefers to trust the local school-boards rather than the centralized Board of Education.

Mr. POWERS: I have stated perhaps a dozen times since I have been on my feet that I do not think they have the authority to designate how the money shall be expended.

Mr. BROWN of Brockton: I thought I understood by the question of the gentleman from Boston that your Board of Education would have control over the local funds that might be raised in that particular town for its schools. Is that true, or is it true that your Board of Education has control only of the State fund which is put into that town in addition to what the town raises itself for its own school purposes?

Mr. Powers: However violent the statements may have been made by the gentleman from Boston, he did not go as far as that. The most he claims is that the Board of Education has control over the State funds, without regard to the local boards. Of course the local boards have absolute control over the appropriations made by the cities and towns. The real question is: Shall the State or shall the Legislature be authorized to control the appropriations, that is, determine the purposes for which they shall be used, that are authorized by the Legislature?

Mr. Washburn of Worcester: The fundamental trouble that exists in discussing this amendment is that an attempt is being made to mix oil and water. That experiment has been tried often but never has succeeded. We shall make very little headway until we understand what the issue is.

The chairman of the committee on Bill of Rights (Mr. Edwin U. Curtis) exhumed this measure from that bottomless pit of the docket of the Committee of the Whole and brought it into the light of day, because he thought that in some of its provisions it cast a cloud upon that measure referred to by its friends as the anti-aid amendment and by those less partial to it as the anti-sectarian amendment. The gentleman in the first division, the chairman of the committee, in my opinion, is right in contending that these two measures, in some particulars at least, are inharmonious. I have wondered why, with the complete domination of this Convention possessed by the committee on Bill of Rights, it has not long since asked us to go back to the Constitution as it was framed in 1780, and so use the pruning knife that it might be brought into complete harmony with the views of the committee on Bill of Rights in 1917. The same inconsistency exists between this proposed amendment and the anti-aid resolution. I will now venture, Mr. President, to read a portion of section 2 of chapter 5 of the Constitution of Massachusetts. I invite the attention of the brethren as I go back to the ark of the covenant. It reads as follows:

> Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and magistrates, in all future periods of this Commonwealth —

To do what? Among other things, — and listen to this, —

> . . . to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures.

That is the article as it stands in the Constitution, and that article as it stands enunciates a policy which the anti-aid amendment seeks to abandon for all time. There is no escape from that proposition, and you cannot harmonize the two views. You either must modify your anti-aid amendment, if it has not passed beyond recall, or you must change this ancient charter under which we have lived for so many years. Ah, Mr. President, as I have reflected upon this proposition, as I have attempted to enumerate the advantages that we might hope for under this anti-aid and anti-sectarian amendment, I have wondered if we are not paying too great a price, — I have wondered if we were not paying too great a price, — and that same doubt rests in the minds

of many of the delegates who, like myself, finally voted for it. At one time during that discussion I sought to engraft an amendment upon that measure leaving in the hands of the Legislature the right, if it saw fit, to maintain scholarships in our two great engineering schools. I said to the Convention then, and I repeat it now, that if that right is denied, it will not be long before there will be an imperative demand for the establishment of a State school of engineering. And that is sure to happen.

Let us not engage in a general discussion, but come right to the crux of this proposition. We never can settle any question properly without knowing the truth. It is foolish to obscure the issue. It is idle for any one here to deny that there is conflict between the anti-aid amendment and part of the measure proposed by the committee on Education, and the same conflict exists between the proposition of the committee on Bill of Rights and the Constitution as it was written originally. If the anti-aid amendment is to go before the people as a declaration of a new policy of the Commonwealth, a new policy in response to the wisdom of 1917 as contrasted with the wisdom of 1780, then there should be an amendment changing the original charter, and there should be the same amendment of that part of the measure proposed by the committee on Education.

The distinguished gentleman from Boston in the first division (Mr. Edwin U. Curtis), the benign, the gentle, the pacific, the persuasive chairman of the committee, complained in my hearing a moment ago that the gentleman from Newton (Mr. Powers) had not answered his question. I have answered it. I have answered it squarely. [Applause.] And I tell him that in my opinion the original Constitution of 1780 must be amended, and also part of this pending measure of the committee on Education, if they are to be brought into complete harmony with the anti-aid amendment.

Mr. Avery of Holyoke: I think we all agree that we shall be engaged the next few years in problems more difficult of solution than this government ever has faced, save at the time when it went into the business of government. There are two weapons that we can use to solve these problems, and they are about the only two. One is religion and the other is education. By the amendment of the Bill of Rights, or the anti-aid, we have shut out religion from the helping hand of this Commonwealth. Are we going to take the only other weapon we have, education, and shut that out too? That is what this proposal amounts to.

There is a question about immunity from taxation. How many colleges can live in this Commonwealth to-day and pay taxes? Perhaps Harvard can. Perhaps a few can. My own college, Amherst, cannot, and there are many other small colleges that we love that cannot do it. Are you going to take that chance and subject them to that liability?

For four years I was principal of a high school in the State of New York, and I know the difference between a local system of schools and a State controlled and organized system, and I say that Massachusetts, if it is going to compete with other States, with New York and the great States of the west, has got to come to a State organized and controlled system of schools, — and that system this present resolution makes possible.

There may be some conflict between this and the anti-aid amendment. We had better let that conflict stand. We had better say that at this time, facing the problems that this old Commonwealth does face, we will do what we can to save from the wreck the one great instrument we have got left to use, — education. [Applause.]

Mr. Samuel L. Powers of Newton moved that the resolution be amended in section 2, by inserting after the word "otherwise", in the last sentence, the words ", save as otherwise and elsewhere provided in the Constitution,"; and by adding at the end of section 2 the words:

To this end the Legislature shall have the power to exempt from taxation property used for charitable, benevolent, literary, educational, scientific and religious purposes.

Mr. Powers: I think the former amendment removes the objection made by the gentleman from Boston. In other words, if the sectarian resolution is adopted by the people it becomes part of that title, and appropriations made for educational purposes would be subject to that resolution.

Mr. Anderson of Newton: I have two amendments before the Convention which speak of the exemption from taxation for charitable, educational and religious purposes. I have been informed and shown that we ought to add from the statute the words "benevolent, literary and scientific", making it "property used for charitable, benevolent, literary, educational, scientific and religious purposes," to make it conform to the statute of Massachusetts, and I ask unanimous consent so to perfect both these amendments.

No objection was made and the amendments were modified as indicated.

Mr. David Stoneman of Boston moved that the resolution be amended in section 1, by striking out the word "Christian", and inserting in place thereof the word "all".

Mr. Clark of Brockton: I want to vote right on this question when I vote, and I must confess that I am in the dark, not understanding all the effulgent lights that have been shed upon this body in connection with this matter. I wish to read one phrase of this resolution, hoping that some member of the committee will be able to enlighten me as to just what the scope of it is:

It shall be the duty of Legislature and magistrates, in all future periods of this Commonwealth . . . to encourage private societies.

Of course it mentions other things, but it distinctly says that.

. . . to encourage private societies. . . . To this end the Legislature shall have power to make such provision by taxation or otherwise as will, in conjunction with the local agencies [the private societies] and institutions above enumerated, insure a complete and efficient system of education, which will afford to every one opportunity for full mental, physical, and moral development.

Mr. Brown of Brockton: The gentleman has been five years an honorable Senator from the honorable city of Brockton, and I should like to know if this is the first time he ever read that section in the Constitution.

Mr. Clark: I confess in my humility that it takes me longer to comprehend some things than it does my friend from Brockton. [Laughter.] But, Mr. President, I desire to know if it shall not be the duty of the Legislature and of magistrates to encourage Young Men's Christian Associations, provided they furnish the means for mental,

physical, and moral development, as many of them are doing at the present time. Furthermore, I want to ask him if it is not the bounden duty, if we pass this resolution, for the Legislature to encourage these things by making grants to churches that maintain schools and gymnasiums, as many of them will if the funds are forthcoming from the public treasury.

Now, Mr. President, I am in hearty accord with every move that makes for a higher education, a broader education, better opportunities and privileges for the poor man's boys and girls. I am with it every time. But, Mr. President, I believe that there is such a looseness in the second section of this resolution that nobody knows what it will do, or rather nobody knows what it will not do. I am afraid of it as it is. I do not see any limits to it.

I want to say before I sit down, Mr. President, that in the first section I recognize great merit and beauty. In fact, it is an essay of beautiful sentiments and must appeal to the moral sense and the æsthetic taste of every delegate in this Convention hall; but when we come to the second section there are things that are absolutely dangerous, in my judgment. I cannot vote for that resolution as it stands at the present time.

Mr. Edwin U. Curtis of Boston: I think in fairness to this Convention one question ought to be raised that has not been raised here at all. In chapter 5, section 2, appear the words "public schools and grammar schools". Then was passed the eighteenth amendment, which was "public schools and common schools". That repealed chapter 5. Now by this resolution you are putting back the words "public schools and grammar schools", and you are defeating the eighteenth amendment. That is, if the anti-aid amendment should not be accepted by the people and this amendment should be accepted, you have defeated the proposition of the eighteenth amendment, which already has been determined by the court as saying for what purposes and what schools money raised by taxation shall be used.

As far as the committee on Bill of Rights is concerned I am sorry that I have not the facile tongue of the gentleman from Worcester (Mr. Washburn) who so aptly described me. Not having that tongue I shall not attempt in this Convention to describe him, but I will say that he is a very skilful and acute man, and that he has put back his institution, Worcester Polytechnic Institute, where we took it out on the 22d day of August, if this resolution is passed. But he was fair, he was square, when he said that there were things in that resolution which it was dangerous for this Convention to pass. Now, then, after that statement and argument I want to ask the 295 gentlemen sitting in this Convention who voted for that resolution if now, six weeks afterwards, they want to change their minds and go before the people and nullify it by another act. Yes, gentlemen, if you show me that a majority of you do, I have nothing to say; but there is one here who never will do it, because I say it is a reflection on the intelligence of this Convention to pass an act in August and repeal it in October.

Mr. Powers: I should like to ask the gentleman whether, in his opinion, the amendment offered by the gentleman from Lexington, which appears to have been offered before I submitted mine, does not cure the entire difficulty.

Mr. Curtis: I want to say that possibly I may not be able to

answer his question correctly, as I have not studied it carefully. But this does occur to me: That if those two resolutions went before the people at the same time, and the so-called anti-aid or anti-sectarian, — I am not ashamed to use the word, — resolution was defeated, then I think those words would allow the Legislature to make appropriations for public schools, for private schools or anything else that it might want to make appropriations for, and thus would repeal the eighteenth amendment. That is what I think would be the effect of those words if they were both there. That is what I suppose the gentleman from Newton (Mr. Powers) wants me to say. I am not committing myself definitely till I have had time to study it. I should say that with the amendment of Mr. Anderson on taxation, to clear that up, it probably would accomplish the result if they were both accepted.

Now, gentlemen, I want to call your attention to one other thing while I am standing here. While the gentleman from Worcester (Mr. Washburn) voted for the resolution, — finally he did vote for it, — he did not want to vote for it, and from the day that he stopped fighting it I was suspicious; I was suspicious then and I have been until this measure came up to-day. Almost every other man here who has talked against the resolution, who has applauded the speakers, who has said anything, has been a man who voted against the anti-aid resolution originally, who did everything he could against it. The gentleman from Fall River (Mr. Cummings) is square and fair. He says he wants to take any method, and does not care what it is, to beat the anti-aid amendment, and I applaud his frank statement. There is no concealment about that. There is no stab in the back or anything like that. I think that what he said is probably true, — I think I quote him correctly, — that if those two amendments were accepted at the same time the only university in this State that would suffer would be Boston College. Why? Because they teach denominational doctrine there. Now, I want you all to understand that fairly and squarely. I would not be a party to voting for anything that would deprive that college of the same rights that some other college had. I understand he agrees in the statement. And also the only private schools that would be stopped would be the parochial schools. Now, I am broad enough to say if we are going to give money to other schools, give it to parochial schools; but you will prohibit it by that amendment if those two amendments are passed, as he said yesterday, with the words "denominational doctrine" there. Denominational doctrine is taught in parochial schools, and they will have nothing under this resolution, and neither will Boston College. So I want you gentlemen to know these things when you vote for it.

Between the gentleman from Fall River (Mr. Cummings) and myself there is no ill feeling, no disagreement. We agree perfectly. He says fairly and squarely that he wants to defeat that amendment by any means, and I say that this Convention ought to pause and think of what they did in August and what they are asked to do now. The gentleman from Worcester (Mr. Washburn) says fairly and squarely that there is a difference, and I say there is a difference. I say if you pass that resolution you will ruin the other one, and if that is the way this Convention wants to go before the people with its work, I do not want to be a party to it.

Mr. CUMMINGS of Fall River: It is obvious that if both amendments

are adopted the conclusion which the gentleman from Boston (Mr. Edwin U. Curtis), the chairman of the committee, has stated as expressing my view is I think correct, but the way to solve the difficulty is to defeat the anti-aid amendment. It is a melancholy reflection for the sober-minded men of this Convention, the delegates to this Convention, to have before them what the gentleman from Holyoke (Mr. Avery) stated to be the fact, that we have jettisoned religion, we have thrown religion overboard, one of the safeguards, and we have education only left to us. That remark was based upon the assumption that the anti-aid amendment would pass, would be submitted to the voters at this election and ultimately pass. If it is true, — if it is true, Mr. President, — then it is a serious matter for this Convention to assume responsibility for losing one of the anchors of the State, — religion, — and relying only on the other, and not too securely on the other unless this amendment reported by the committee on Education is adopted.

The gentleman from Worcester (Mr. Washburn) speaking with his usual felicity, with the charm that surrounds all that he says, reminded this Convention of what I attempted imperfectly to state when the anti-aid amendment was under consideration, that this Convention was advising the voters of Massachusetts to abandon the policy of the fathers, which was to cherish the things that are enumerated in the second section of chapter 5. Mr. President, do not let us become confused here between these two amendments. One of them makes for education distinctly. One of them will help this State. One of them will not start fires but will quench them. One of them will make peace. One of them will tie the people together. The other inflames the passions of the people. The other will start the fires. The other rejects the counsels that have made Massachusetts great. Choose between them. Take what the committee on Education offers to help Massachusetts, or take what the committee on the Bill of Rights offers to destroy Massachusetts. [Applause.]

Mr. DONNELLY of Lawrence: As a member, gentlemen of the Convention, of the committee on Education, I should like to state that having five resolutions before our committee we summed them all up into one resolution, which is known as resolution No. 309. It was moved in that committee of ours to give our secretary, who formed a subcommittee, also the so-called power and authority to draft these resolutions into one resolution and report them back to the committee. The sectarian amendment being under discussion at that time, or the report of the Bill of Rights Committee, we possibly did not think, I will say that I did not think, that this measure would conflict with the so-called adopted sectarian amendment now, and up to yesterday morning in the meeting held by the committee on Education I told the chairman of our committee that I would support this measure provided that I saw that it did not conflict with the so-called adopted sectarian amendment at the present time, and I asked the committee on Education to reserve my rights to dissent in that respect. Well, the chairman of my committee said sure enough that I had the right to dissent if I felt as though this measure conflicted with the so-called sectarian amendment. I wish to give notice at this time. As I have listened to the debate on this resolution, I think my own committee along with myself have acted with good faith. Part of them possibly

may have been slightly accused of trying to break up the work that the committee on Bill of Rights has done. I think we have acted in the best of faith, but I do feel now as though it does conflict with the anti-aid amendment, and I want to put myself on record as being a dissenter to this measure.

Mr. LOMASNEY of Boston: In view of the fact that this sectarian issue is being brought out so prominently I think it is just as well to meet it now. When that amendment was before the committee on Bill of Rights it was my privilege to meet several distinguished Catholic gentlemen of this city, three laymen and one clergyman, and we went over the question and we discussed it thoroughly. And here was the position of those gentlemen, and they are men of standing in the community, who in the past have represented the Catholic interests at the State House. I will read to the Convention their statement in relation to the matter:

1. They did not desire to prevent any private institution from receiving money from the State for educational or charitable purposes.

2. They felt there was no need of any further constitutional amendment to prevent the payment of money by the State to private institutions.

3. They were unalterably opposed to the Batcheller or Anderson amendments.

4. If it was necessary to pass any amendment they would accept the Curtis amendment.

When the committee on Bill of Rights was considering this matter in executive session the gentleman from Newton (Mr. Anderson) asked to have the resolution of the committee changed. He asked to have the words "religious doctrine is taught" stricken out, and the words "denominational doctrine inculcated" substituted. The committee, or several members of it, delegated me to talk with some of the gentlemen who were watching this matter, not only this year, but who have been watching it in behalf of the Catholic population of this State for several years. I talked with one of the most representative Catholics in this city, a lawyer, a man of integrity and ability, who holds a responsible position. I told him the exact situation. I said: "Mr. Anderson has suggested to the committee that we eliminate these words and take the other words. If we do that, the entire committee will be in accord. It is up to you, now, to say whether we shall have peace or whether we shall have war on this question." He asked: "How do the committee feel?" I replied: "They have no objection, but so far as I, myself, and several others who are interested, are concerned we want your viewpoint and we will do as you say." He said he would take the language suggested by Mr. Anderson on the matter, and that was how we came to bring in this unanimous report.

Now, gentlemen, it is all very well to talk about kindling the flames and doing all these various things, but who is doing it? We have seen this State House crowded for years, for what purpose, — assailing the Catholic population of this State, and demanding that the Constitution be amended so as to stop them from seizing the money of the people from the treasury of the Commonwealth! Yet the facts show that the Catholic institutions of this State have received but $49,000 out of $16,876,620.24 expended since 1860. And still these men were saying they wanted the amendment passed to stop the Catholic in-

stitutions from receiving public funds! Then when the Catholic gentlemen came before the committee they said: "We do not think there is any need of any legislation, but if you are going to pass any amendment pass one that applies to all. Why should our denomination be singled out, when we have not been receiving this money?" And for years the Catholics have preached that doctrine before the committees at the State House. They never came forward asking for any money, they never sent a lawyer asking for money, and all they had received was $49,000. But certain men were continually saying: "You do want it," and they further said: "We want this amendment to apply to institutions wholly or in part under sectarian or ecclesiastical control." And I want to say of the gentleman from Newton, and I could not do less, that when we told him the Catholic viewpoint of the words "sectarian or ecclesiastical control," and said that we felt it was a deliberate insult to the denomination to which it was our privilege to belong, he said: "I have no intent to insult them, and I will take those words out." And those words came out and then we drafted a new amendment which was changed after one of the most prominent Catholic lawyers in Boston consented to it; and that brought the matter out of the committee unanimously. The lawyer who approved of it has represented the Catholic people at the State House for years.

The amendment came before the Convention and we discussed it. We had all these innuendos, all these insinuations, but no constructive suggestion; no amendment was put forward; so we did the best we could. Were we not justified when these representative Catholics told us their viewpoint, — which was "equal rights for all, special privileges for none," — when we had heard them say that repeatedly in the corridors of the State House and at the public hearings held in this building?

I have in my hand, sir, a copy of the Boston Pilot of April 10, 1915. It says:

BATCHELLER BILL IS BEATEN 116 TO 107.

Decision Reached After One Of The Most Exciting Sessions Ever Held in The Legislature.

The proposed sectarian amendment to the Constitution of the Commonwealth known as the Batcheller bill, after one of the most rancorous debates ever held in the House of Representatives, on last Wednesday evening, was defeated by a vote of 116 to 107.

Among the bigots who made a pitiable exhibition of themselves were Representatives Fred P. Greenwood of Everett and Fitz Henry Smith, Jr., of Boston.

Among the valiant champions of liberty and true patriotism were: Martin Lomasney of Boston, Edward F. McLaughlin of Boston, Peter J. Donaghue of Boston, Joseph J. Donahue of Medford, John F. Doherty of Fall River, John N. Levins of South Boston and Dr. John P. Good of Cambridge.

Before a vote was reached on the Batcheller bill, the so-called Fitzgerald bill was taken up and defeated by a vote of 116 to 111 and the so-called Cross bill met a similar fate by a voice vote.

A complete report of the speeches and details of the character of the voting will be given in the Pilot of next week, as the proceedings were carried far beyond the press time of the Pilot.

Now, Mr. President, if it was true patriotism to support the principle of that resolution in 1915 I cannot see any treason in supporting it now. I state frankly that I for one would not vote for any amend-

ment that would give the least insult to any religious denomination in this State, particularly the one in which I was born and brought up.

Now, all kinds of efforts have been made to stop this amendment. Why? Is it an attempt to keep this State in turmoil? Why should those of us who live in this State under our flag, which gives equal rights to all, divide on this question when the amendment applies to all?

Gentlemen, I know this Convention, and I know something about the character of Massachusetts Legislatures. Let any man read the proceedings of the Convention of 1853, — there was not a Catholic member in the Convention, — and see how those gentlemen tenderly, fairly and carefully considered the Catholic interests. One of the worst squabbles was between the different Protestant denominations, for the different denominational schools were then in existence and they were fighting for the money amongst themselves, but they were courteous and kind and discussed the Catholic population then just as fairly as we to-day discuss the Jewish population. But the times have changed since then. There were men in that Convention who told about the dire disaster that was going to happen in this State when the Catholics got in the majority. Why, sir, take the inaugural address of Governor Gardner, when he was inaugurated Governor of our State. In his address he requested that the Irish companies of the militia be disbanded because he said they could not be relied upon to defend the flag of our country; but shortly afterwards the civil war showed he was wrong, and our flag was carried forward to victory by Catholics and Protestants alike. [Applause.]

Now, sir, why be fooled? We are sensible men. Who can dream that the amendment these gentlemen brought here was not all understood? Who had a meeting in the Union Club? What was their purpose? What were they doing? The President of Harvard University was there, — that is generally admitted. I make no reflections on the gentleman, — but these are times when one must talk plainly, — the gentleman from Harvard was in the Union Club privately with some other gentlemen. The President of Harvard University was also before this committee. The sectarian matter has been before the Legislature for years. It was known that it was coming to this Convention. Did they have any measure here to meet the situation? Do you suppose with their education and ability they did not know it? Did they have any amendment? No. They took two or three measures and some skilful work was done. As I told you earlier in this Convention they have able seamen on the job here, and these men, — I make no reflections, — who stand up and cross their hands and assure us that they knew nothing about this matter certainly have nerve. It is a pretty good job for men who did not know what they were trying to do. It seems to me, when you consider that three men on this committee on Education voted against the anti-aid amendment, and a couple more of them were not for it very strong but fell in line, that there were powerful and well-directed interests behind this proposition.

Mr. Creed of Boston: I was very much interested in listening to the clipping from the Boston Pilot of April 10, 1915, which the gentleman keeps in the scrap-book for which he is famous. I should like to ask him: Has he in that scrap-book an editorial from the Boston Pilot of September 22, 1917?

Mr. LOMASNEY: I think the gentleman must be mistaken. He talks about keeping papers in some book. I have the editorial, and I read it, and I read you the other statement from the Pilot of April 10, 1915. Every Catholic here can say truthfully that he never knowingly voted for a proposition that was an insult to the denomination in which he was born and raised. He was given no such viewpoint. Gentlemen representing the Catholic community, four of them, talked with me on this proposition, and I read you substantially what they stated. One of them talked with at least ten members of this Convention, — Catholics and Protestants alike. They also made the same statements openly before the legislative committee in this building in 1915, and I am informed by a member of this Convention that the shorthand notes of that meeting will show it.

Mr. CREED: The gentleman speaks of four distinguished Catholic laymen. Is not the Boston Pilot the official organ, so called, of the archdiocese of Boston?

Mr. LOMASNEY: Of course, I do not know what the gentleman means by that. The Boston Pilot has been the official organ of the Irish Catholic population of Boston since I was a boy. I never knew it had changed its policy. I did not catch the exact question, but I want to say, Mr. President, and I am talking of what took place, that one of the gentlemen talking with me is a clergyman, three others are respected men of intelligence. Mr. President, it made no difference to me personally what they said. If I had agreed with them I should have been with them. If I did not agree with them I should use my own judgment, because I could do that, but it would make a difference in the way I should present the case. Now, I talked with members of this Convention, and some of them asked me the situation and I told them with whom I had talked, and some of the men in this Convention themselves talked with some of those gentlemen and confirmed my statements. Mr. President, my point is this: One cannot do what was called a patriotic act two years ago and have the same action denounced as treasonable two years afterwards. The gentleman from Fall River (Mr. Cummings) yesterday frankly said that there was no difference in principle between the proposition we were advocating and the amendment he gave to me as the result of the Union Club conference, because they agreed in their amendment, Mr. President, to stop the whole matter in 1925.

Now, sir, why is all this brought in here? We are not repealing any parts of the Constitution affecting Harvard University. We have touched only what we have stated there. But we do not specifically repeal any part of the Constitution. We are standing on the law. How was that amendment brought in? It is not the same as the original document. They have smuggled words in there, and I venture the assertion that they did know it. What are we going to lose if we kill the resolution? Nothing. That is what we should do.

Mr. CREED: During the debate this afternoon, if my memory is correct, the gentleman from Newton (Mr. Powers) said that during the debate on the anti-sectarian amendment he was assured by members of the committee on Bill of Rights that there was a resolution coming up that would take care of his amendment. I have understood, since this matter was dragged forth from the docket of the Committee of the Whole, that the committee on Bill of Rights had no

previous knowledge of resolution No. 309. I should like to ask the gentleman if he knows what members of the committee the gentleman from Newton referred to.

Mr. LOMASNEY: The gentleman from Newton is a member of this Convention. He is far better qualified than myself to state his thoughts to this Convention and to the gentleman. I am responsible for my own thinking and talking and for no one else. But, Mr. President, when I take a position that I believe is right, as God Almighty permits me to see it, I do not quit for any one.

Mr. BLACKMUR of Quincy: Did I understand the gentleman to say in the course of his remarks that at the time he had his conferences or was dealing with this subject-matter in this committee he was in conference with a reverend gentleman high up in the Catholic church here in Boston, and that he agreed to the final draft of the resolution as it was passed, the anti-aid question?

Mr. LOMASNEY: I made what I considered was a statement of fact. Let me make it again. I said that I talked with four gentlemen in this city, one of whom was a clergyman, a Catholic clergyman, and that we discussed this matter before it was considered. This was their view of the situation. I never talked with a Catholic clergyman present but once. I did talk, sir, and some of the committee members knew I was talking, with another gentleman who was far better qualified than myself, not only on statute law but on constitutional and canon law. I do not pretend to know much about either. It seems to me, however, that this is a civil matter. And as I stated before, I talked with a gentleman on the final solution of this problem. He is a lawyer of integrity and standing and represented the Catholic viewpoint. He decided this matter as it finally was settled, because he decided that it was all right to change the words as Mr. Anderson suggested. The original words were put into the amendment by the gentleman from Taunton, Mr. Swig. Pardon me, I could not be more precise.

Mr. BLACKMUR: Do I understand, or does the gentleman now claim, that the Catholic church is satisfied with the amendment as it was passed?

Mr. LOMASNEY: I certainly am not the one to speak for the Catholic church. I cannot. I have my limitations. When the gentleman from Newton (Mr. Anderson) asked me, when I appeared before the committee, whom I represented, I replied: "I represent no one but myself." But I represent in part in this Convention an intelligent constituency, and I am speaking here now for the Fifth Suffolk Representative district. What else does the gentleman desire?

Mr. BLACKMUR: In view of the statement made by the gentleman from Ward 8 —

Mr. LOMASNEY: Ward 5, Mr. President.

Mr. BLACKMUR: . . . and in view also, not that I question the fairness of the statement whatever, but in view also that he has read an excerpt from the Pilot, an editorial from the Pilot, I should like to call his attention to the editorial in the Pilot of September 22, 1917, bearing upon this issue, and I understand few gentlemen of this Convention have seen it:

As usual, there arose the third party —

Mr. LOMASNEY: I will admit I have seen that.

Mr. BLACKMUR (continuing to read):

As usual, there arose the third party, good men, doubtless, sick and tired of all this nasty controversy caused, let us again repeat, not by the Catholics, but by anti-Catholic fanatics.

Their endeavor was to plan a way out of the difficulty in the shape of a compromise amendment. The result was that (without in the slightest doubting their good intentions) they attempted to remedy one evil by applying another.

The bigots wanted to close the doors of beneficence against Catholic citizens. The result of the compromise was to close the doors of beneficence against everybody.

Mr. HERBERT A. KENNY of Boston rose to a point of order which, being stated, was that the matter which the gentleman was reading questioned the motives of the members of the Convention in an undignified way, and therefore was out of order.

The PRESIDENT: The Chair cannot pass upon a matter until he has heard it. The Chair would caution the member, however, against reading any matter which does not bear upon the matter before the House. The Chair is of the impression, although he is not certain, that the article which the member proposes to read relates solely to a matter which already has been finally passed on by the Convention, and has no reference whatever to the resolution now before the Convention. He will depend upon the member not to read any matter which does not relate to the resolution before the Convention at the present time.

Mr. BLACKMUR: I do not want to trespass upon the feelings of the Convention, nor do anything which seems to be in contravention of the ruling of the Chair. This is entirely in reference to the action of this Convention with reference to the so-called anti-aid amendment. It is, however, exactly in point to the discussion and to some of the remarks made by the gentleman from Ward 5. He has stated the position, as I understand it, of the Catholic church in Boston on this question, and has read from the article.

In view of those facts, I believe that this is germane to the issue and the question, and is properly to be submitted by me at this time. I submit, however, to the ruling of the Chair. I do not care to read this article if the Chair believes that it is not in order.

The PRESIDENT: The Chair is aware that the debate has had considerable latitude. No question has been raised in regard to it. It is of course perfectly competent, in order to discuss the measure now before the House, to point out that it is in conflict with a measure which already has been adopted, and to that extent the debate has been proper in reference to the other matter, showing where the conflict lies; but the Chair does not understand that the matter which the member proposes to read has any reference whatsoever to the resolution that is now before the Convention. If that is the case, then the Chair suggests that the matter should not be read.

Mr. LOMASNEY: I wanted to correct the gentleman. He said I claimed I was speaking for the Catholic church. I never claimed that, sir, at all.

Mr. BLACKMUR: I think the gentleman is under some misapprehension. I understood him to say in explanation of his position that he was stating the fact that there was a reverend gentleman who converted him, very properly, and that he had got the idea from this reverend gentleman that the Catholics were satisfied, or would be

satisfied, with this so-called amendment. That is what I said, nothing more.

Mr. Lomasney: The gentleman from Quincy is a lawyer. He voted against the amendment, and I am not responsible for his understanding. He certainly, sir, cannot put words into my mouth that I never uttered. I said I had conferred with four men; I did not say they conferred with me. Does the gentleman get the distinction?

Mr. Blackmur: No.

Mr. Lomasney: Well, I am sorry.

The debate was continued Thursday, October 4.

Mr. Bryant of Milton: There are several very important amendments now pending to this resolution which it seems to me have not been adequately discussed. I think many of us who voted for the original anti-aid amendment are disinclined to go back on an action already taken, but at the same time we feel that if this amendment now pending could be so worded as not to be inconsistent with the so-called anti-aid amendment that we should be glad to vote for this amendment. Now, the gentleman from Newton in the third division (Mr. Anderson) has offered two amendments intended to deal with a situation that is novel in this Convention. I mean the question as to whether the anti-aid amendment prevents the Legislature from exempting educational and religious corporations from taxation. I do not believe there is a member here who does not desire the Legislature to have the power to exempt from taxation educational and religious institutions. Now, that question is at present in doubt. We have heard from the learned gentleman from Fall River (Mr. Cummings), who is very sure that the anti-aid amendment does so limit the Legislature. The amendments of the gentleman from Newton are intended to meet that situation. I think they ought to be carefully discussed; and if that apparent defect in the anti-aid amendment can be so cured without destroying its main purposes, I think that many of the members, including myself, would want to vote for it.

Mr. Lomasney of Boston: Yesterday, when we adjourned, I was about to say that there were three other gentlemen from Boston on the committee on Bill of Rights who are of the same denomination as myself. They all gave the best that was in them to settle this question. Each one of them is far more competent to tell his views on this matter than I am. I simply want to say that I am trying to state nothing except my own views.

Now, Mr. President, let me just say a word on the main question. The article we are being asked to amend is one that was passed in the early days of the State. In the Convention of 1853 there was a great contest over denominational schools.

When I use the words "Protestant" and "Catholic" I want the Convention to understand I have no malicious feeling at all. I want to say, Mr. President, in that Convention one of the great contests was on denominational schools, between the different denominations of Protestants at that time. They had the same controversy, the same issues, the same money question, — friends of each denomination charging the other with getting the larger share of the public funds. But they settled the whole question. They went into the Harvard College matter very minutely. There were questions raised about the

validity of their holdings, and so forth; but that also was settled. Now, around the time of that settlement, Mr. President, we had coming into this country people of the race to which I belong, — the Irish race; and we now have coming into the country the Jewish people. The Irish people came here, — many of them were Catholics, — and they took our laws as we made them, and conformed to them as a matter of conscience; they built their parochial schools, and supported them as private schools, — because the law compelled them to do that; and they went forward and contributed immeasurably to the best interest of the State by the way they took hold of this great question. Believing in having the education and religious training of their children go hand in hand, they did the best they could to bring about good results for all, and they have gone forward in a magnificent way. The schools that those people built and maintained are a credit to them, — and no one who is fair can say anything else. The Catholics have done this, and they never have asked for assistance. And now, sir, come the Jewish people. In the section where I live they also have their religious schools, where they teach the Talmud and where they also give education to their children. The gentleman from Boston here yesterday, who offered, in accordance with the belief of his people, the proposition to strike the word "Christian" out of the Constitution and insert all religions, so that it will be "all religions," — speaks the viewpoint of his people on that question.

Now, all these questions are brought in here, and why? They say: To reconstruct this article which has been the settled policy of the State for years and over which there has been no contest. The committee on Education wants us to reconstruct it, rebuild it, and reform it, without showing a serious defect in it or a demand for a change. Mr. President, if you are going to put these propositions into this resolution and allow colleges and institutions of higher learning that are under private control to have an opportunity to take the public money for their purposes, how can the gentleman from Fall River (Mr. Cummings), — I am sorry he is not here, — but how can he or any of the other eight men who hold his views, — and there were nine Catholics who voted against the anti-aid proposition out of the twenty-five, — how can they sit here with their views and allow all of us in the State who are Catholics to be taxed to maintain institutions of higher learning that are just as Protestant in their educational purposes and in their control as our institutions are Catholic? Is he to remain silent and allow such discrimination?

Mr. Brown of Brockton: Will you repeat that last sentence, about Catholics and taxation?

Mr. Lomasney: I am a poor hand to repeat anything, Mr. President. [Laughter.] I try to do the best I can; I have no set speeches, and I do not know what I said. [Laughter.] I do not mean exactly that, — I meant every word. I know the principle of what I am trying to say; the words may be different.

I was asking, sir: How can the gentleman from Fall River, with his honest convictions and fears of the future, how can he remain silent now, when these private institutions of higher learning are trying to get public money, without putting in an amendment giving the parochial schools the same consideration? If he does that, I shall offer an amendment to allow the Jewish schools the same privilege. And

why should they not have it? If public money is to be given to these private institutions, why are the others not entitled to it? Is the fact that we are going to have academies where the daughters of the rich may enjoy these great advantages, or where gentlemen's sons may be educated out of public funds in private institutions, — does that make any difference?

Now, those are two conflicting elements that come forward at once, and we have to meet them.

Then comes the other proposition, — I mean that of the gentleman from Boston (Mr. Stoneman) to strike the word "Christian" out of our Constitution in deference to his views and his people, and put in "all religions."

All of these difficulties are coming up, Mr. President, for what reason? The reason assigned here at the start was "sentiment." Sentiment! The sentiments of the State regarding Harvard College are now in the Constitution, and they have been there for years. The work the college has done is also its record. Why allow sentiment to creep in here now? And right here let me say, as I looked at the gentleman opposite, having caught his eye just now, he has offered amendments which, if adopted, may do the very thing we do not wish, although I have not had time to read them. I mean the gentleman from Boston, Mr. Mansfield. He put in some words which said "all schools." I want to be frank, — I have not read it over carefully, — but that may be the very thing we do not want. We are opening the door to all these possibilities. For what purpose? For sentiment! Because, Mr. President, no one came here asking to have this section changed. It was the result of an attack made on Harvard College, for which I am not responsible and about which I am not talking; they grouped three or four measures and submitted this amendment.

In the early stages of this Convention it was my privilege to suggest to the Convention: "Do not change the old Constitution unless there are sound, valid, and substantial reasons for the change." Now, if sentiment justifies opening up all of these questions, do it, Mr. President, — especially if it means the greatest good for the greatest number. In the course of my criticisms of educational matters, I have paid my respects to Harvard College, but I never would try to change the Constitution in what they have done, and interfere with what is settled, because I believe it is an unsound policy in a great Commonwealth like Massachusetts.

Now, Mr. President, we worked on the Bill of Rights proposition, and the district attorney of this county worked on it; Mr. Callahan, Mr. Sullivan, Mr. Barnes, Mr. Curtis, Mr. Swig and all the other members worked on it. And, Mr. President, when we touched a word we never knew where that line went to; and we never knew where the powder would lead to after we made the least change.

Now, here is the whole corner-stone. The only real argument made has been from the gentleman from Newton (Mr. Powers), for the Board of Education. That is a matter that can be cured by statute, if it is desirable to be done, and that should not be done until every school-committee in the State has an opportunity to speak for its educational system. Now, Mr. President, just as I said, these private institutions are just as Protestant in their control and management, — and I say that not offensively, — as the other institutions are Catholic

in their management. We have tried to start the State upon a policy of no public money for institutions not under exclusive public control and superintendence, and, Mr. President, that is what the anti-aid amendment does.

If we pass this resolution it opens the door to these matters which we have discovered so quickly; and we cannot tell how many more. It is taxation without representation, because it is impossible for a Catholic to live in some of these institutions that have been getting money from the State under private control and be treated as he should be. And I make no reference to any of them specifically. It is wrong in principle. We have struck a blow in the right direction and I hope we shall not change.

Now, Mr. President, the Worcester Polytechnic Institute has done good work, but there are three ministers on that board, — gentlemen of ability. I make no unfriendly reference to the institution. It has done great work in the community. But there are three ministers on the board. What would you say of an institution that had three Catholic priests on the board? Would you not say it was somewhat sectarian? I mean no offence when I say this. Of course you would, Mr. President.

There is only one thing for us to do. Massachusetts to-day is an entirely different State from the Massachusetts of 1853, and we are making a Constitution to last for the future. How can we, in view of the past, pass this amendment to favor these private institutions of higher learning? Are we going to deny to the children of the poor, — Catholic, Jewish, or Congregationalist, Episcopal, Presbyterian or Universalist? They all have the same rights. If we are, why not allow all denominations their own schools and have them all paid out of the public funds, just as they had before our people came here years ago. Of course that means the Catholic and Jewish people will have their schools paid for in the same way.

It is dangerous ground to tread on, Mr. President, and I think the best interests of the State would be preserved if we should defeat this proposition and leave this whole question as it is.

Mr. Anderson of Newton: We have had a very remarkable series of debates here in the last two or three days. First, the genial ex-Congressman in the second division (Mr. O'Connell) read the letter of Mr. Cram. Mr. Cram thinks somehow or other that this whole matter which has resulted in the anti-aid or anti-sectarian amendment is in the hands of fanatics and bigots. God be thanked that it is not in their hands in this Convention; that it is in the hands of men of moderate views, of men who wish to understand each other, of men who wish to come to an accommodation in reference to this matter, and to build here a solid peace. Mr. Cram says also that we ought to turn our backs upon all of the magnificent progress in these lines which was made in the nineteenth century; all that magnificent progress by which we emerged from a State church, by which we laid down the great principles of religious liberty and separation of church and State in this Commonwealth, — we are to turn our backs on the great educational progress which was made under those conditions during the past century. And what are we to adopt in place of the policy of Massachusetts? We are to go back, according to him, to a policy which was rife in the eighteenth and seventeenth centuries; a policy

which still prevails in most countries of both Protestant and Catholic Europe, — the old European policy of more or less union of church and State, so that under it in Europe either the State itself teaches religion or has handed it over to the schools to be taught by either Protestant or Catholic churches as the case may be. And what is the result of that? It has been race and class and religious hatred in Europe. It has been bad for the State, it has been bad for the church, and it has been bad for the schools. Why should we go back to that very condition out of which our fathers so painfully and slowly made their way?

Then comes the gentleman from Fall River, — I am sorry that he is not present here this morning, I wish he were, — we come to the gentleman from Fall River, who tells us plainly that he is opposed to the eighteenth amendment of the Constitution; that he hopes that the time will come when the sectarian schools of his own church shall receive the public support. If I had said, — if *I* had said, — that the Catholic people of this State had those sentiments, I should have been charged with insulting the Catholic people of this State. And I want to say that I have learned something on that point since I came to this Convention. I believe that if I should say that the sentiments of the gentleman from Fall River are the sentiments of all our Catholic population, I should be insulting them; for I believe that there is a very, very large proportion of my Catholic friends and fellow-citizens who are perfectly willing to stand on the doctrine of religious liberty and separation of church and State. I have no doubts on that question at all. The gentleman from Fall River says that he is going to test this thing at the coming election. I am glad to have it tested, and I believe that it will be seen that the majority, and perhaps the large majority, of our Catholic fellow-citizens stand shoulder to shoulder with all the rest of us in believing in religious liberty and the separation of church and State, even to the point of sectarian appropriations. And I want to say that any man who says that he believes in religious liberty, and at the same time stands ready to take a dollar out of the pockets of his fellow-citizens for the sake of propagating a religion in which that citizen does not believe, is self-deceived. He does not believe in religious liberty consistently and to the end, for the very bottom of religious liberty is this: That the State can force no act in the sphere of religion. And if a man says that he believes in the separation of church and State, he does not consistently believe in it unless he is willing to apply it to sectarian appropriations.

I am glad that I stand just where I do. I am glad to coöperate with all of the loyal men on the Bill of Rights Committee, who, of every creed and shade of belief, stand together for this great treaty of peace.

Now, I have told this Convention very frankly why I went over to this proposition, and I am going to tell you one more reason, which I had not yet told you. It is simply this, that I believed that in the proposition of the Catholic members of that committee, and of the whole committee except myself, with reference to this matter, there was offered to our side of the matter an olive branch, and it was not my business to reject it, and it was not in my heart to reject it, and it was not for me to say in what form it should be offered. But it would not have been right for me to have accepted it in that form unless I

had believed that "No public money to private institutions" was a good policy for this State. I came to this Convention with an open mind on that subject, and my study here has proved to me that it is the only consistent and thoroughgoing and sound policy for this State to adopt, and I hold to it.

The gentleman from Fall River characterized the anti-aid amendment as a homage which fear offered to intolerance. Do not believe it for a minute. It is a proposition which coming power offers to fear. It is a proposition which seems to me to be the very finest policy which our Roman Catholic friends could possibly adopt. They do not need to hear it from me. I have no business, perhaps, to say this thing at all; but I do say that if our Roman Catholic citizens want to get the love and the sympathy and the confidence of their Protestant and non-Catholic fellow-citizens they cannot do anything better than to pass this anti-aid amendment.

Now, I wish to speak specifically to this education resolution which is before us, and I want to say, in the first place, that I have no sympathy with aspersions upon the sincerity and the integrity of this committee, — the Education Committee. I believe that they have acted in absolute good faith in the whole thing from the beginning to the end. In the second place, I want to say that I am an educator myself; my father was a college president, and I have lived under the shadow of higher educational institutions all my life long, and there is not a man in this State who believes in the necessity and in the good of education more than I do. But when I look at this amendment I find that it was written in 1780, at a time when this State had a State church, when they were full of a whole world of ideas that we have outgrown; and it is perfectly impossible for us, it seems to me, to be sure that we can cure it in any way and make it agree with the principles of the anti-aid amendment.

Of course I want to cherish education. We were told by the gentleman from Fall River and the gentleman from Worcester who sits at the front of the Convention (Mr. Washburn), yesterday, that we did not want to cherish education; that if we rejected this resolution of the Education Committee, actually the Commonwealth of Massachusetts, as I understood it, would turn its back on education, would cease to cherish education. I should like to know whether we have not cherished education in the Commonwealth of Massachusetts. No Commonwealth has cherished education so much as we. Are we not cherishing education to-day? Certainly we are. And how many educational institutions are to-day receiving money from the Commonwealth of Massachusetts? Not one single purely educational institution is so receiving money to-day. There are technical institutions and trade-schools, a few of them, that are receiving some money, but there are no purely literary, educational institutions that are so receiving it. And yet we are cherishing education to-day in the Commonwealth of Massachusetts.

In this State was begun the American public school system, the everlasting glory of the Commonwealth of Massachusetts; and the statue of Horace Mann, the founder of that system, stands in front of this State House with Daniel Webster, and worthily stands there. And this American public school system has gone from this Commonwealth of Massachusetts throughout the length and breadth of this land, and

is being copied, and is to be copied in all of the nations of this world. We have founded and cherished this public school system, and we cherish our high schools and our normal schools; and I am one of those who believe that the time is coming, and ought to come, when Massachusetts will have a great university, in which the sons of the poor can have an education in accordance with their means and without fees. [Applause.] And I believe that the time will come when we shall be even prouder of our system of public education than we are to-day.

Now, when the State adopts a new policy and says that it thinks it is best that private institutions should not receive money from the public crib, we nevertheless cherish those institutions just the same. It is a very small and superficial opinion that believes the opposite.

When the mother weans her child and makes that child learn to eat independently, does the mother thereby cease to cherish her child? When I cease carrying my boy in my arms, cease keeping him at home, and send him to France to live an independent existence there, do I cease to cherish him and to love him? Not a bit of it. By this policy the State simply says: "Private charity will be stimulated and made robust if it is made independent and learns to walk alone." If every private institution in this State knows that as a last resort it may come to its Senator or Representative, and by a method of log-rolling get something through the Legislature, it never will have that spiritual strength, that spiritual support in the community, that it will have if it is entirely a private institution.

Gentlemen, we are not opposed to cherishing education. We wish to have it cherished, and cherished in the right way.

Now I want to say a few words about some amendments which I have put in, and I ask you to take up, if you will, the Orders of the Day. Look at page 2, please, at the bottom of the page. When the time comes I shall withdraw my amendment, the second one which is placed upon the Orders of the Day; I shall withdraw that one in section 2, by striking out the last sentence; I shall press the other two amendments, however, — the first one, and the one which is at the extreme bottom of the page and the beginning of the page on the other side.

I wish to say that I offer this amendment with reference to the Legislature having "the power to exempt from taxation property used for charitable, benevolent, literary, educational, scientific and religious purposes," not because I have the slightest doubt as to the continued exemption of church property from taxation if the anti-aid amendment should pass. The anti-aid amendment does not in any way deny the right of the exemption of church property, or of the property of charitable and benevolent institutions. I think I can speak for our committee as a whole in saying that we stand by the categorical statement read by our chairman in the former debate with reference to taxation, and reaffirm that our amendment does not deny exemption from taxation to property used for purely religious or benevolent or charitable purposes. But since in the minds of this Convention, and since in the minds of the people of this State, the doubt has been raised as to whether church property really is exempt, even under the present Constitution, I think we ought to still that doubt by putting into the Constitution some such amendment as this:

"The Legislature shall have the power to exempt from taxation property used for charitable, benevolent, literary, educational, scientific and religious purposes." For that reason I am going to move to strike out the article of amendment entirely, and insert in place of it those words. We might make some amendments to this later, Mr. President, and I suppose they will be in order later, some proposed technical amendments. Of course it will be threshed out in the Convention, and made to be just exactly as the Convention wants it to be.

I want to say that I cannot agree to having this educational report go through. We were told that it was a matter of sentiment. As far as the first section was concerned, I understand the president of Harvard University had no desire particularly that this first section should stand here; and I feel that while sentiment is a most excellent thing, — and I will stand for sentiment as long as almost anybody will, — still if this amendment, founded on sentiment, stands in the way of something real good and substantial, let us have the real good and substantial.

As far as the second section is concerned, if I thought that section added one right or privilege to education I should vote for it. I do not believe that it does. I believe that the Legislature has power to do that for which my colleague from Newton yesterday thought this amendment necessary. I have no doubt on that subject. At least let it not be brought in here, but let us have the bill in the Legislature; and when it is taken to the courts, why, if they say that that is unconstitutional, then let us have a constitutional amendment, — which, according to some brethren here, is going to be a very easy thing to secure hereafter.

Now, that is the way to fix this whole matter, it seems to me. I believe that this resolution does not really do anything for education. I do not believe that its advertisement of education amounts to anything, or its advertisement of Harvard College amounts to anything. I think that something buried in the Constitution of Massachusetts, if people were as ignorant about it as I was ten months ago, probably would be buried forever. I think that there is not very much in that proposition of advertisement. Consequently, I feel that this is an unnecessary measure; and I do not believe that any unnecessary measure ought to be put before the people of the State. Rather let us pass the amendment which is under my name, which does guarantee to education, and to all that is best in the State, exemption from taxation, — a real benefit. And I shall modify my amendment, I think, so as to have it read: "The Legislature shall continue to have the power to exempt from taxation," — because I believe they have the power now.

Mr. WASHBURN of Worcester: I rise merely to correct a misstatement which the gentleman in the third division (Mr. Anderson of Newton) has made touching my position yesterday; a misstatement inadvertently made, I doubt not.

What I sought to do yesterday in reading from the Constitution was not to suggest that the Convention, if it should not adopt the resolution reported by the committee on Education, would commit the State to a policy of not continuing to cherish institutions of learning. I was calling attention to the fact that if the anti-aid amendment is to go before the people of the Commonwealth unembarrassed by an inharmonious suggestion, both in the Constitution as it now stands and in

the amendment proposed by the committee on Education, one of the documents would need to be amended. I call the attention of the distinguished gentleman from Newton in the third division (Mr. Anderson) to this quotation which I read yesterday, and which began with these words: "It shall be the duty of Legislatures and magistrates, in all future periods of this Commonwealth, . . . to encourage private societies . . . for the promotion of agriculture, arts, sciences, commerce, trades, manufactures." That same phrase is repeated in this amendment reported by the committee on Education.

All that I sought to do yesterday was to call attention to that fact, and to express my surprise that some member of the committee on the Bill of Rights had not already introduced a motion to amend the resolution of the committee on Education in that particular; and if the amendment proposed by the committee on Education shall fall, then to amend the Constitution as it was written in 1780. That was my only purpose. Of course I know, and every one else knows, that the Commonwealth will continue to cherish education.

Mr. Brackett of Arlington: In opposing the motion for the previous question upon this resolution two days ago I stated that I had no desire to speak upon the merits of the proposition. I did not at that time have any intention of debating it; but the peculiar character of the opposition which has been made to it prompts me to-day to say a brief word or two, not only in support of the resolution, but in protest against the unprecedented and unwarranted character of this opposition.

The committee on Education has been criticized by certain members of the committee on Bill of Rights because that committee had not consulted the committee on Bill of Rights before reporting this resolution. Now let us consider for a moment the history of this matter.

It was well stated by the gentleman from Haverhill (Mr. George) two days ago. Certain resolutions were referred to the committee on Education; that committee, as was its duty, carefully and faithfully considered those propositions, and reported this resolution upon them. In doing that it simply was doing its duty, and was not under any obligation to consult any other committee whatever before making its report. And now that committee is entitled to have its report considered upon its merits. If we believe this is a bad resolution, then let us vote against it; but if we believe it is a good one, that it will have a tendency to promote the educational and other interests of the Commonwealth, then let us vote for it.

I believe that it is a good resolution. I favor it because it will promote not only the educational interests of the Commonwealth, but, what is of equal importance, that it will promote equality of educational opportunities between the children of the Commonwealth. And I want to see the power of the Legislature so strengthened, as I believe it will be by this resolution, that it may make such provisions as shall give the children of the poor citizen of Saugus the same educational advantages as are enjoyed by the children of the rich citizen of Brookline.

The debate this morning has taken a wide range; instead of being confined to the resolution before us it has extended to a matter which we already have disposed of. I do not propose to make any reference

to the remarks which have been made, in which the names of certain religious denominations and certain races have been brought in. While I am aware that I have many other sins to answer for hereafter, there is one of which I never have been guilty, — in my public life or in my dealings with my fellow-citizens I never have been actuated by anything like racial or religious prejudice. I always have treated my fellow-citizens with equal regard, irrespective of their religion or their race. And I do not propose to go into that discussion. I am sorry that these names have been brought in here. The only thing, as I have said, for us to consider is whether this proposition is a good one or a bad one. Several amendments have been suggested; but if we vote the resolution down, why, that is the end of it, there will be no opportunity for these amendments.

As the gentleman from Boston in the fourth division said in discussing the motion for reconsideration this morning, there are other stages upon which amendments can be made, so if this resolution is ordered to a second reading, then at future stages amendments can be made to prevent any conflict between it and any resolutions which have been adopted heretofore. But if we defeat it, that is the end of it; there will be no opportunity at all for bringing in such amendments.

Therefore I appeal to my fellow-members of this Convention, if they believe that this resolution is in itself a meritorious one, to vote for it, reserving the right, which is theirs of course, to amend it upon its future stages.

Mr. JOHN W. DALY of Lowell: As a member of the committee on Education I find myself in a somewhat unusual position. When the anti-aid resolution was presented to this Convention, for its approval or disapproval, I was opposed to it because I believed that it was un-American and un-democratic; because I believed it was an attempt to influence legislation favoring class distinction. However, after the question had been discussed ably and eloquently by men who, because of their experience and opportunity for careful study and investigation as to constitutional and statutory requirements, to my mind at least, were fittingly qualified to give unprejudiced opinion as to why this question should or should not be submitted to the people for final decision, I became convinced that it was a fair, just and equitable solution of a problem that had been annoying Legislatures and the electorate for a long time. The doubt that had existed in my mind was dispelled until the gentleman from Fall River (Mr. Cummings), who, if you remember, was practically the last speaker, introduced a new thought that partly revived my former misgivings. At this point quick decision was necessary, and when experts disagreed there was no other alternative for me but to decide according to the dictates of my own conscience. Such dictation and my vote that followed meant that to the best of my knowledge I had chosen the lesser of two evils.

Now comes the report of the committee on Education recommending certain changes in the Constitution. I realize fully, perhaps as well as any man here, that it is a dangerous precedent to establish for any deliberative body to reject or be opposed to the recommendation of any of its committees, particularly when such recommendation is unanimous, as unquestionably it is in this case, in the sense that when the question was before the committee there was no verbal objection or dissent. However, at that time there was one member of the com-

mittee at least, — myself, and I have since learned that there were others, — who had mental reservations that if a later analysis of the question in the Convention showed that any of its provisions were detrimental or antagonistic to the anti-aid resolution they would exercise their privilege of dissenting; and such is the position that I occupy at the present time. The chairman, secretary and other members of the committee have said that they do not believe that the recommendations of the committee are detrimental to or antagonistic to the anti-aid amendment. My brief association with those gentlemen has won my respect and esteem and I believe them to be honest. Yet I do not share their opinions. As a consequence, the debate on this question has convinced me that there are provisions in this measure that are antagonistic to the anti-aid amendment, and, inasmuch as I voted for that resolution in the Convention, I cannot now consistently vote to sustain the recommendations of the committee on Education. If I did so, I feel that it would be a reflection on my intelligence or an apparently deliberate attempt on my part to take advantage of an opportunity to change my vote. Therefore, because of these facts, I feel justified in voting against the recommendations of the committee on Education.

Mr. Swig of Taunton: To me it is very significant that those delegates who stood so strenuously in opposition to the Bill of Rights Committee by opposing the anti-aid resolution are to-day the valiant champions of this report of the committee on Education; and because they are the valiant champions of that report I am constrained to believe that there is something in the report which is inconsistent with the action of this Convention when it adopted the anti-aid resolution; and so I ask the Convention: Why undo what you already have done? To-day you are being asked to undo the very first bit of constructive work that you did, and as yet no solid, substantial reason has been advanced for so doing.

In the early days of the anti-aid discussion my heart grieved when I saw my Protestant and Catholic brothers commence a religious debate; and how pleased I was when at last I saw that we were able to bring forth a compromise measure that would still that debate. But now to-day we find it opened again, and why? Because this educational report rips open the question that we wanted to close; and not alone that, but by the amendment of the gentleman from Boston (Mr. Stoneman) it rips open another religious question. I am sorry indeed that the gentleman from Boston introduced his resolution, because I think that if discretion was the better part of his valor he would understand that at this time at least there was no occasion to present any such amendment, because I do not believe the sober sense of this Convention will permit for one moment this report to go through.

Why take up the time in debating something we already have decided? Of course it is a testimonial to the skill of those who are opposed to the anti-aid amendment, but we are not here for the purpose of giving testimonials to their skill. We are here to decide measures, and once they are decided we are to let them stand decided. And so I ask you, gentlemen of the Convention, to abide by your former decision. Do not open up the question again. Let us adopt the slogan that a merchant in Boston follows; let us paraphase it: "When in doubt, kill it." And you have reasonable doubt as to

whether or not this report of the committee on Education is not in conflict with the action that you already have taken on the anti-aid amendment, and therefore you should kill the resolution as presented by the committee on Education.

Mr. Shea of Dalton: While the learned gentleman from Worcester (Mr. Washburn) was speaking in his own calm and persuasive manner, he had almost convinced me that my stand heretofore taken on the anti-aid measure was unsound, and that I, like so many others, had lost my bearings and wandered afar. It seemed to me that, in behalf of education, he was making a wonderful appeal to the Convention to sacrifice all other considerations to the development of all institutions of learning in this Commonwealth. Unfortunately for me his peroration proceeded along other lines. He finished in his customary style, fighting hard for certain engineering institutions toward which he continually has manifested the deepest interests. May I be permitted to remind you of the substance of his closing statements: "This anti-aid amendment may wipe out certain engineering institutions and make a State institution imperative"; and again: "I would remind you further of the amendments I offered long ago that would protect these institutions." Such statements betrayed the real significance of his appeal. If he had spoken of lesser institutions like Deerfield Academy, I doubtless would have remained subject to his eloquence, and felt that he was constructing a beautiful covering to protect education in its entirety from all adverse influences; but when he referred to those patches, which he called amendments, previously offered and urged by himself in the general debate on this floor (and I hold no brief against the illustrious engineering schools which he has so ably championed), it seemed to me that his beautiful covering had shrunk to an insignificant umbrella, intended to shield his own institutions.

Now, Mr. President, it has been urged on this floor that we either should throw the doors wide open to all institutions or only to publicly controlled institutions. I do not understand the gentleman from Worcester favors either course, as I already have stated he merely would protect certain powerful institutions, while the rest are left to their own resources. It is this policy heretofore followed that apparently has caused general dissatisfaction and which has led to the adoption of the new policy embodied in the anti-aid amendment. It is because I believe the new policy is an improvement over the old one, that I voted for it in the first instance, and it is for this reason, together with others uncontroverted on this floor, that I believe we should stand by the anti-aid amendment and kill this hostile resolution.

Mr. Brown of Brockton: I would ask the Convention to consider carefully a matter that has developed during this debate. The second section of the resolution, with a few additional words reported by the committee on Education, is now in the Constitution. It was written by John Adams. There is not another State Constitution that has anything approaching it. It is unique. How much are we going to alter it? The members of the Bill of Rights Committee are determined that this resolution shall not pass. They say that it is in conflict with the anti-aid amendment already passed. Well, then it must be that their anti-aid amendment kills this section which is now in the Constitution.

Mr. Pelletier of Boston: The gentleman has said that section 2 is

now in the Constitution. Will he not change that to say that section 2 except the last six lines is now in the Constitution and that the last six lines are brand new and the subject of objection and discussion?

Mr. BROWN: What the gentleman has said is true; it is so printed. There is no escape from it. But those six lines alone and by themselves would mean practically but very little. The life of the objection of the chairman of the committee on Bill of Rights is against those words that are now in this Constitution, and the gentleman who has taken his seat has made clear the difference between Massachusetts as she was under this section of the Constitution and Massachusetts as she will be if the anti-aid amendment is adopted. He said very distinctly in speaking on the anti-aid amendment that it was nothing for anybody or it was something for everybody. That is the situation. Until the committee came forward with this anti-aid amendment Massachusetts was governed by this section which contains the grandest sentiments of brotherhood that ever were written in such a document.

I felt interested to know how that section came in our Constitution. I knew John Adams wrote it, but I wondered: Did John Adams have a sudden inspiration, as it was called, when it took us off our moorings yesterday, and was it thus projected into the Convention of 1780? And then it occurred to me that sentiments like these rarely are enunciated through a human instrument unless it has so qualified itself that the Divine Power can speak through it if occasion demands. So I sought last night to discover it elsewhere in the writings of John Adams.

Now John Adams, after he wrote that splendid section, was away from this country for about seven years, and then he came back and he was elected President of the United States under conditions which you well know and which are not material at this time. And in his inaugural address he again used the very thoughts and words that we find in the Constitution of Massachusetts. In this inaugural he spoke of the country, of its economic conditions, of Washington's administration, and generally how the country was progressing; and then he spoke of "a love of virtuous men of all parties and denominations; a love of science and letters, and a wish to patronize every rational effort to encourage schools, colleges, universities, academies, and every institution for propagating knowledge, virtue and religion amongst all classes of the people, not only for their benign influence," —here comes the reason why he put it in the Constitution; here comes what he hoped to accomplish: "not only for their benign influence on the happiness of life, in all its stages and classes, and of society in all its forms, but, as the only means of preserving our Constitution from its natural enemies, the spirit of sophistry, the spirit of party, the spirit of intrigue, profligacy, and corruption, and the pestilence of foreign influence, which is the angel of destruction to elective governments;" and he went on further with more that I might read; but that is sufficient for my purpose.

Why now the opposition to this? It is because if this goes to the people it does control that anti-aid amendment, and it is because if this does not go to the people the anti-aid amendment limits its operation or repeals it, and we cannot reason it in any other way. Just as the eighteenth amendment was corrective and restrictive upon this proposition, so the extension of that eighteenth amendment, as our

committee has reported it, is a still further restriction, and it is such a restriction that it may abrogate that benevolent section.

You men who have stood in such profound reverence for the Constitution, to my mind, next to the idea that all men are born free, you should reverence this section. The propositions presented for your choice are: Massachusetts, with her hands out, something for everybody; or Massachusetts, her hands behind her, nothing for anybody.

In Britain, when they were driven to the last extremity by the Romans and the Conqueror was making his address, his last words were: "Think of your forefathers and of your posterity." That is the spirit of this portion of your Constitution; it is not the spirit of to-day. The spirit of to-day is the commercialism in the anti-aid amendment.

I am reminded of a councilman, — I will put the incident in New York, — who, when a proposition was before the body for an appropriation of money for something that might also benefit posterity, rose to say: "I object, Mr. Chairman; what has posterity ever done for us?" And that is precisely the commercial tone of the age. Are we going to refuse to give anything for any undertaking, however meritorious? Why is the member from Newton willing to exempt churches? I am willing they should be exempted, but why not be true to yourself? An exemption from taxation of one man is a placing of the burden of that taxation on the other man. There is no difference between the benefit of a donation from exemption from taxation and the benefit from aiding by a donation out of the proceeds of taxation.

Mr. Edwin U. Curtis of Boston: I should like to ask the gentleman if he thinks that church property and property devoted to educational purposes should not be exempt from taxation?

Mr. Brown: I want it clearly understood; I will help all churches, although I am an unattached Christian. I am asked: "What is your religion?" I want to say this: I believe in an over-ruling Power, omnipresent, omniscient, controlling every atom in the universe and holding every atom to account; that every atom however minute or aggregation of atoms however large carries within its own atmosphere the impress of all the events through which it has passed. Sooner or later its intelligence must render an account with itself. And in that broad spirit, sir, I am willing to help anybody and everybody who is doing good by religion or otherwise. I want that to be the spirit of Massachusetts; just as I believe it was the spirit of Massachusetts when John Adams wrote it.

Mr. Shea: I should like to ask the gentleman from Brockton if he does not think there is a difference in the proposition that we exempt all churches and all educational institutions, — I say this as a practical matter, — from taxation, and giving to the Legislature the power to appropriate money for the aid of different institutions. As a practical matter is there not a great difference?

Mr. Brown: I will answer your question, No. As a practical matter, I see no difference. If you are going to overhaul this system, overhaul it. If you are going to entirely separate the State from giving any aid to any church, do it.

Mr. Edwin U. Curtis: I do not understand the gentleman from Brockton has answered my specific question. Does he argue that

church and educational property should not be exempt from taxation? It is a simple question and can be answered by yes or no.

Mr. Brown: I do not. I will not only give them what they have got but I will give them more. They need it; we need their help. If there was any uprising at this time, who do you think could control it if it cannot be controlled by the ministers of the gospel, no matter what the denomination or sect? Who has controlled uprisings in the past? Who has upheld the State when the State was in danger and anarchy almost reigned? Who but the Church? I do not argue that the church and State should be united. No, because the church should not be united with the State. It has had its experience; it has passed through it. It does not wish to repeat it. Our Constitution provides amply against any possible union. Our Bill of Rights provides again and again that they never again shall come together. There is a vast difference between the church running the State, — there is a vast difference between the church coming inside the State compared with the State recognizing the fact that the church is doing good and handing out to the church money for charity, piety and benevolence. Because education is doing good the State is giving it money; it is giving to the arts or sciences or agriculture for the same reason. I want this amendment adopted so that it may be known that it was not intended by the anti-aid amendment to repeal this section. I should ask the gentleman from Boston, the chairman of the committee on Bill of Rights, if I may do so through the indulgence of the Chair and the Convention, if I do him any injustice in suggesting that the anti-aid amendment does repeal this section. Does he want it to appear as a part of the records of this Convention, that can be looked at in the court, that it is not the intention of your committee to repeal that section?

Mr. Curtis: I think I stated the other day very plainly, and so that it could be understood by a child, that in my opinion the resolution now before this Convention was in absolute contradiction to the anti-aid amendment. If the matters contained in this resolution now before the Convention are already in the Constitution, then I say the anti-aid amendment is opposed to those matters.

Mr. Brown: Now, gentlemen of the Convention, you have got it. You have got it from the chairman of the Bill of Rights Committee. Just as I thought. I did not want to say such was the intention of the anti-aid amendment. In all fairness let me say what ought to have happened in this Convention. The gentleman who proposed the anti-aid amendment should have had the privilege of bringing it into this Convention and it should have been voted upon. Do you tell me that you have debated this anti-aid amendment as you have debated it and taken sides as you have, and that the people are not going to take sides one way or the other? Do you think they cannot read? Do you think that if you gave them in one amendment the words "wisdom and benevolence, piety, the arts, sciences, commerce and all the social affections of the people," to be encouraged and aided, and asked them to say yes or no on that, and also yes or no on the anti-aid amendment: "Nothing for anybody"? "Nothing for any religion; nothing," — do you think the generous sentiment of Massachusetts would say "No" on the first and "Yes" on the second?

Mr. Anderson of Newton: I think the gentleman has not read the

anti-aid amendment recently. If he does read it he will find out that it does not prohibit the teaching of religion but does prohibit the teaching of distinctive denominational doctrines.

Mr. Brown: This good old Commonwealth used to hold conventions down in Plymouth County where my ancestors came from, and they went into grave discussions concerning creeds, upon righteousness and salvation or something denominational of that kind; but to me as I read it now it was the "whichness of the what," and is about the same when I listen to those who try to expound the differences between religion without denominational doctrine and religion with it. I can recognize the fact that a universal religion exists because there is a Giver of all good and it is an expression of His love. The Bill of Rights Committee said it was unanimous and therefore we should accept their amendment; give us what we have presented; do not change it. What is good treatment for one committee ought to be good for another. The Education Committee comes practically united, and the Bill of Rights Committee advocates the rejection of its resolution. I am opposed, as I have said, to forcing Massachusetts into a discussion of the anti-aid question just at this time when we need that she shall have all the power which she can exercise under the amendment proposed by the Education Committee.

Mr. Cummings of Fall River: I was advised after a short but unavoidable absence from the session this morning that some question was asked me by the gentleman from Boston in the third division (Mr. Lomasney) and that later some reference was made by the gentleman from Newton (Mr. Anderson) to views that I had expressed. I understood that the question that was asked by the gentleman from Boston was substantially this, — I did not hear it, but he has restated it to me and I want to answer it. I wish to answer it as well as I can. The question, as I am advised, was this: If these two amendments are placed upon the ballot and both of them are adopted, would not an institution like Boston College, for example, be excluded from public aid? I think it would. It is excluded now under the anti-aid amendment from public aid. Keep that fact in mind. The anti-aid amendment excludes it and excludes all others, so that if it is adopted, even though the report of the committee on Education also is adopted, Boston College still will be excluded. I do not want this Convention, or the larger constituencies that we represent without the Convention, to be misled into believing that I ever wished to discriminate between any of these institutions. I want Boston College and Holy Cross College and Tufts and Amherst and Williams and Harvard all on the same plane; but I want Massachusetts to have the right to help any of them when she wishes and I do not want her hands fettered. [Applause.]

I tried to say the other day that I was not comforted by the thought that I was taking something under this anti-aid amendment from fifty private or semi-private schools in this Commonwealth. It is not my rule in life to comfort myself by the thought that I am doing harm to somebody else. Those institutions never received aid because they were private or because of their religion; they received aid because they were useful, because they served this State, because they became agencies and instrumentalities to carry out the advice of the fathers that has been read repeatedly to this Convention and apparently

repudiated. I believe that if I cannot do all the good I want to do, I have no excuse for not doing the good that is at my hand. I want, — and everybody knows my views about it, — to see Massachusetts free, if it can be done, but not to agitate at this time, not to inflame the people with the matter of giving to all the schools, to give parish schools and all the rest, aid if they serve the State. Keep that fact clear now and hereafter. But I would not introduce a resolution to give aid to the parish schools. I would not introduce a resolution that would inflame this State, that I know would disturb this State when she needs all her strength.

I want to go further with this matter of the anti-aid amendment. The gentleman from Newton said a moment ago that it was a mistake to say that the anti-aid amendment forbade or prohibited the teaching of religion; that what it prohibited was the teaching of denominationalism, — the beliefs of the sects; and for that purpose, although in my humble judgment the Catholic Church is not a sect, but considering it that way, that would practically exclude the teaching of all religion. It would be a very short course, a very brief course in religion, that could be given in the public school under his definition, because he wants religion confined to the things that men agree upon. Men do not agree even on the existence of God; that is, it is not a unanimous agreement, — it is not a universal agreement. We could not teach even that without offending somebody. We could teach principles of morality, we could teach the substance, perhaps, of the Ten Commandments if we left out the first two, but we could not teach religion under the anti-aid amendment without offending somebody; and that is not its purpose.

Now, Mr. President, let me say in conclusion so that I shall not be misunderstood, — and I shall not arise again unless in reply to somebody who invites me to answer a question, — I would leave Massachusetts free to give to all the institutions in this State, public and private, whenever those institutions are necessary or helpful to Massachusetts. I will not take away from the private schools of this State, although there is not one of them that is a Catholic school getting aid, — I will not take away one dollar from them, because they never have misused it, because they have used it for the higher, better purposes of this State. I refuse to withdraw it from them simply because the institutions in which I am particularly interested, as distinguished from those, cannot have aid. I do not want some one hereafter to claim that the Catholic attitude, so far as there is any Catholic attitude, is opposed to the giving to these institutions because it cannot have aid itself, — that it shuts the door on every institution. That is not our attitude, Mr. President. That is not the attitude, that is not the best thought of this Commonwealth. Soberly and seriously, when the time comes for deliberation away from the oppressive atmosphere that I am sorry to say has been found in this Convention, Massachusetts will do right. She will see that she is abandoning the wisdom of the fathers, she will see that she is restricting the counsel of the fathers, and I hope she will come back to it before it is too late.

Debate was continued after the noon recess.

Mr. WELLMAN of Topsfield: If it were only possible to come back to the simple merits of this resolution and drop all the extraneous and outside matters that have been discussed under the guise of it, it is

very certain that it would be immediately adopted by this Convention. But it has been so obscured and mixed up with other things that it is very difficult for many to realize the real situation. It perhaps ought to be hardly necessary for me to say, and yet I think it is my duty to the committee to say, in view of what has been charged against the committee, that this committee has had no part in any scheme or any arrangement or any design of any kind or sort to defeat the anti-aid amendment or to modify or change it. The conference to which reference has been made I never heard of until I heard it referred to on the floor of this Convention yesterday or the day before. No member of our committee was present, and I am assured by a gentleman who was present, a member of this Convention, that this matter was not before that conference, was not in any way discussed there. It seems to me that all the suspicion that has been thrown round this matter in that regard ought to be dismissed absolutely from our minds if we intend to deal with this matter fairly and clearly.

There is one other matter which it seems to me has been greatly confused in this debate. Much of this resolution, the greater part of it, is simply the language of the present Constitution, and I think the greater part of the criticism that has been made has been made upon the language of the present Constitution which simply is repeated. The result of defeating this resolution will be to bring back the original Constitution. Nothing will be gained in regard to the various matters that have been suggested here; in fact, perhaps, in some respects the old matters will be stronger, if anything.

A great deal has been made of the point that the language has been used

> to encourage private societies and public institutions . . . for the promotion of agriculture, arts, sciences, etc.

That language is in the present Constitution and we simply have followed it. Can it be possible that any member who will read that language understandingly can come to the conclusion that that is contradictory to the anti-aid amendment? The anti-aid amendment, if I understand it, simply stipulated one thing that should not be done in regard to these institutions, namely, public money should not be appropriated to them; but it did not provide that they should not be encouraged and aided in any other way. If that anti-aid amendment could be construed fairly as contradictory to the provisions of the Constitution that we should cherish education and that we should aid private institutions, so much the worse for the anti-aid amendment. We cannot afford in this Convention to put ourselves on record as saying that this old Commonwealth will not cherish education and will not aid education, whether it be private or public. [Applause.]

Just what did the resolution which the committee reported do? It omitted, as I said the other day, certain things which seemed to be to every one, so far as they came before our committee, unnecessary. It added the lines at the end of section 2, beginning "To this end the Legislature" — and I should like to read them, they seem to have been so misunderstood:

> To this end the Legislature shall, save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution, have power to make such provision by taxation or otherwise as will, in conjunction with the local agencies and institutions above enumerated, insure a complete and efficient system of education which will

afford to every one opportunity for full mental, physical, and moral development, and will aid and encourage all to become unselfish and loyal citizens.

I do not think, Mr. President, that there would have been the slightest objection to that language had it not been viewed with a distorted vision. That does not provide anything contradictory to the anti-aid amendment. But if it did, there is no objection whatever to accepting, which I understand the committee is unanimously prepared to do, the amendment suggested by the gentleman from Lexington (Mr. Clapp) by inserting the words ", save as elsewhere and otherwise provided in the Constitution,"; and also there is no objection to accepting the amendment of the gentleman from Newton (Mr. Anderson) using the same words in section 1. Now with those words inserted it seems to me that we come back to a simple educational proposition, a proposition which is desired earnestly by the Board of Education. The chairman of that board has urged the necessity of doing something along that line.

Gentlemen have arisen here and told how they desired to forward education and how they desired to assist it, and then they have moved to strike out the only progressive thing that there is in this resolution. It is a fact known to every educator that there are many localities in this Commonwealth where the people are poor and where the educational system is not what it ought to be, and it has been proposed by the Board of Education to help that situation and they have been met in the Legislature by the suggestion, — there is a difference of opinion among lawyers about it, but they have been met by the suggestion, — that it would be unconstitutional to enact a mill tax, that it would be unconstitutional to consider that there is a system of education in the sense in which it is now used; and they desire this amendment in order that they may help the poorer localities to a good education.

Can there be any possible objection to that, and can we afford in this Convention to take our stand against that principle of education equally for all the people? If there is anything in this amendment that is contradictory to what this Convention has done, pass this resolution and amend it so that it will be clear that it does not contradict. But if there is anything in what we have done that is contradictory to the sound principles of education and will not allow us to give education to those who are in humble circumstances and cannot get the money without the aid of the State, then in Heaven's name let us take back what we have done and help these poor people who ought to be helped. We cannot afford to let this Convention adjourn and take our stand against public education. I do not care what the reason is; put yourselves on record for that if you will. I will stand alone against that and I believe that the future will uphold me. [Applause.]

I do not believe there is any reason, any sound reason that can be given why this resolution should not pass. Gentlemen arise here and say it is contradictory to the anti-aid amendment, but they do not explain how or where, and we have then amended the matter so that it is clear that it is not contradictory.

Now there is another stage to this resolution, and if there is any reason which any one can discover that is worth while considering, another amendment can be put in that will make it perfectly clear that it is not inconsistent with anything this Convention desires to do. The committee on Education does not desire to influence the other

matters in this Convention one way or the other, but they do most earnestly desire to take care of this educational matter.

It has been suggested that if this resolution is defeated, we can later have another amendment to the Constitution to correct the error. What are we here for? Are we not here to perfect this matter? Now the fact is this, that the Board of Education is not willing to go in and spend money and start a great enterprise and have it overthrown later. They want to know before they start that the plan is constitutional. And it seems to me that we owe it to the educational system of this Commonwealth to see to it that that is put right while we are here.

I understand, Mr. President, that there is an amendment which has been offered by the gentleman from Newton, which has not been printed, which places at the end of section 2 a provision allowing the Legislature to exempt from taxation certain institutions. I would say that the committee have no objection to that amendment. They do certainly have an objection to an amendment which will strike out entirely the present resolution. The entire progressive value of this resolution is in the last six lines commencing "To this end". If that is struck out there is little that will be of assistance to the educational system of Massachusetts.

Mr. FLAHERTY of Boston: I believe that if a stranger were to come in and listen to this debate he would be led to believe that the Commonwealth of Massachusetts had no system whatever for educating its inhabitants, that its school system was about to be thrown overboard, and that no provision is made for education of our citizens unless we make it through the endowment of private institutions. I wish, however, to call to the attention of the gentleman from Topsfield chapters 39, 40, 41, 42, 43, 44 and 45 of the Revised Laws of Massachusetts, which contain a most comprehensive scheme of education for all cities and towns in this Commonwealth. It provides for the Board of Education; it provides for the establishment of every conceivable kind of school, both common and high schools, and further it provides, in places where a town itself is not able to maintain a high school, that it may combine with another town and together maintain a high school. The laws require that if a town of five hundred householders or more does not establish a high school, that town shall be responsible for the tuition of any boy or girl living in that town who attends a high school in an adjoining town. Such a comprehensive scheme of education in fact cannot be found in any other State in this Union. If that is so, then the cause of education is not abandoned here; rather it is fostered. In chapter 39 we find the scheme of a Commonwealth school fund, a scheme that provides for its enlargement from time to time and gives to the Board of Education the authority to use that fund in such a way as will best advance the interests of education. If that is so, what more do we want? Why should we go out of our way to establish and maintain private institutions?

Mr. WELLMAN: Is it not entirely true that under the statute to which you refer any grant of money to any one of these towns for a high school once granted is entirely outside the control of the Board of Education so that it can say nothing as to the conduct of the school?

Mr. FLAHERTY: As I read the statute those things are controlled ultimately, or rather the direction of the purposes to which the money is applied by a city or town is primarily under the control and direc-

tion of the Board of Education. The administration of the school, if it comes within the terms of the statute, is left to a school-committee of the city or town in which it is established.

Mr. WELLMAN: I should like to state that that is not the construction which has been put upon the statute.

Mr. FLAHERTY: I would call the gentleman's attention to the decision of the Supreme Judicial Court in the case of Fiske *v.* Huntington, reported in the 179th Massachusetts, where this subject is fully considered and where this scheme of education, this scheme of establishment of high schools by two or more towns, is approved. But apart from that suggestion, Mr. President, it is not a desirable thing for this Commonwealth, in view of what has been done and what shall be done under and by virtue of these statutory provisions, to establish, or rather foster, private enterprises, enterprises over which the Board of Education, on Mr. Wellman's theory, would have no control. It would be a private institution conducted by private persons for private purposes in which the public have no rights, where public money is expended. This is not the time to insist upon that. If we are going to discuss education here, if the proposal is to save education, what more do you want when you have such a comprehensive scheme of education as is provided for in these statutes? [Applause.]

Mr. WILLIAM H. SULLIVAN of Boston: The matter on which we are about to vote is document No. 309. A strenuous defence has been made of this document in behalf of education, they say; but it seems to me, in view of the question asked by the chairman of the committee on Education, that the fight here is made not for education but for the vindication of the Board of Education, which has harassed the Legislature for years, seeking to have increased the amount of money it is supposed to devote to education. The gentleman from Holyoke (Mr. Avery) says: "We have driven religion from the State, and now we are going to drive away education," and the delegates cheered his statement. Now let us be serious and practical. Let us read the resolution without any of this hysterical eloquence of our members and see what it means.

Some of our members have maintained with apparent seriousness that this amendment does not nullify the anti-aid measure. It is so interwoven with that measure that I feel you will forgive me if I, having been a member of the Bill of Rights Committee, say something about the anti-aid amendment. Certain people came before that committee who were considered bigots by some members of the committee; and believing the people who sent me here to represent them were opposed to any change in the law, or the Constitution, acting in their behalf I cross-examined the witnesses with fervor and enjoyed myself thoroughly. The second day I was advised by representatives of those opposed to the sectarian amendment that a compromise satisfactory to everybody would be brought forth from our committee. From the beginning I was friendly to the resolution we have presented; and when I was led to believe it was acceptable to the people of my district I gladly renounced my cross-examination and stood whole-heartedly with my committee, because I thought that was the proper solution of this religious controversy. Instead of cross-examining with aggressive bitterness I acquiesced in all the committee did, especially when informed by the district attorney (Mr. Pelletier) and the member from

Ward 5 (Mr. Lomasney) that every change, even to a comma, had met the approval of the distinguished committee who were in touch with us.

The gentleman from Fall River (Mr. Cummings) says he represents the Catholics of Massachusetts, speaks for them and knows their wishes. I thought I represented the Catholic sentiment, but at the recent primary, because of the position I took, I was thrown into the political scrap-heap; and when I see the anti-aid amendment destroyed by this amendment I am left with no consolation for my humiliation and I cannot believe that my political sacrifice has contributed in the slightest to the welfare of my Commonwealth. A number of people who came before our committee sought to discriminate further against the parochial schools and the institutions of higher learning under sectarian influences; yet in our investigation we found that these Catholic institutions had received no pecuniary assistance from Massachusetts for years, while millions of dollars had been squandered by this Commonwealth on political and aristocratic panhandlers representing wealthy and powerful institutions. Viewing the situation not as a Catholic, but as a citizen of this Commonwealth who always has sought to protect her treasury from the inroads of the grafters, it seemed to me that if we could protect the Commonwealth from this inexcusable and lavish expenditure of money we could be of some service to Massachusetts, and so I concurred with the rest of the committee upon the anti-aid amendment. Does the anti-aid amendment proscribe religion? No, because our parochial schools thrive, and will continue to thrive, for we think enough of our religion to support it with private funds. We never have asked for any contribution for our religion from a public source. So if the gentleman from Holyoke (Mr. Avery) thinks there is not enough public spirit in his district to support religion, rest assured that in my district religion will flourish without any assistance from the State.

To-day we are confronted with this resolution from the committee on Education. Does any man who reads that resolution intelligently seriously contend that it does not nullify the anti-aid amendment? Does the anti-aid amendment proscribe education? No, it says that education shall be controlled by the public authorities. Unlimited money is given to education, but only that education controlled by public authorities and not by private institutions. The gentleman from Brockton (Mr. Brown) is in favor of this resolution because most of it was written by John Adams. The gentleman from Topsfield (Mr. Wellman) concedes that the most important part of it was not written by John Adams. Therefore the gentleman from Brockton loses his only excuse for voting in favor of it.

It has been pointed out that those who favor this educational amendment, so called, are the ones who debated most strenuously against the anti-aid amendment. The gentleman from Brockton says no debate was allowed on the anti-aid amendment. Surely there is some mistake, for the record will show that it has been a physical impossibility to prevent that gentleman from debating every question. It is said that document No. 309 does not conflict with the anti-aid amendment. The committee on Education contend now, so the chairman of the committee concedes, that the whole meat of the matter is contained in the last six or seven lines, which read as follows: "To this end the Legislature shall have power to make such provision", — such

provision, — "by taxation or otherwise as will, in conjunction with the local agencies and institutions above specified, insure a complete and efficient system of education." Now under this resolution the door is open to all except the parochial schools and the schools under sectarian influence. The door is wide open to every other institution. The gentleman from Boston has an amendment which would open the door wide to all schools, the Jewish common schools and the parochial schools. If there are any here who regret their vote upon the anti-aid amendment and are anxious to set themselves right before their constituents, let them now go the limit. Here is the alternative. Something for everybody, or, as the gentleman from Brockton says, "nothing for nobody." Now, nothing for anybody, is the way I will put it. Then there is the proposition enunciated by the gentleman from Ward 5 (Mr. Lomasney), "equal rights for all and special privileges for none." This resolution discriminates against the common schools or the lower institutions of learning under sectarian influence, but not against the higher. Under this amendment, if it is passed, Boston College and Holy Cross College can get appropriations if they are strong enough with the Legislature. Why not open the door wide? Why not be consistent? Let us take either alternative. Why not submit both amendments to the people and let them settle the question one way or the other, because if the anti-aid amendment is defeated by the people that should settle the controversy; on the other hand, if this resolution, this wide open amendment, is defeated, that ought to settle it. But let us not be led astray by any sophistry, no matter if so eloquent that it needs constant repetition.

If we are going to present the question fairly and squarely, let us adopt the amendment suggested here and give appropriations to all schools. It has been enunciated by various orators here that we ought to open the door wide to parochial schools and all schools. If there is any one here who is fearful of his position or his political future because of his vote on the anti-aid amendment let him now vote in favor of the amendment to open wide the doors to all institutions and to all schools, the parochial schools and Jewish schools, and submit that amendment to the people. That is the way to solve the dilemma. Thus there is submitted to the people the anti-aid amendment, which protects the treasury of the Commonwealth from the highbinders, and there is, on the other hand, the other extreme, the wide open door to everybody who has sufficient legislative skill and power to get an appropriation from the Legislature. That is the situation. There are some who contend that if we defeat this resolution, this educational amendment, so called, it will take away all encouragement from private societies; but we can encourage them without giving them money, we can encourage them with kind words, and that is all that they could receive were it not for these last six fateful lines.

The gentleman from Fall River (Mr. Cummings) in his argument has repeated practically all he said in opposition to the anti-aid amendment, and with that resourcefulness and delightful astuteness which is characteristic of him, when the gentleman from Holyoke (Mr. Avery) in a most impassioned burst of hysteria said: "We have got to protect education, for we have driven religion out of Massachusetts," seized upon that utterance as an inspiration to develop a new line of attack on the anti-aid amendment.

The chairman of the committee on Education has pleaded, with great vehemence, that it would be fair to say that there are some sections of this Commonwealth where the people are so poor that they cannot support schools. That question was debated thoroughly when their supporters sought to protect the poor little academies in the anti-aid amendment. Everything that has been said in favor of this educational amendment was said weeks ago against the anti-aid amendment, and the same orators said the same things. The gentleman from Worcester in charge of the measure has denied that if this educational amendment is passed the Worcester Polytechnic Institute, in which he is a professor, will be made eligible to receive an appropriation and thereby derive material benefit from this amendment. I do not agree with him. If this amendment is passed every school except the parochial schools, the lower schools under sectarian influence, can get appropriations of the State's money if they have enough political influence with the Legislature.

Mr. Whittier of Winthrop: I should like to ask the gentleman whether, if we accept from the committee on Education those perfecting amendments, he can rightfully make his last statement. As far as the committee on Education is concerned, it can be shown, and I think it has been shown, that there are perhaps conflicting clauses in this resolution No. 309. Is it not possible to amend them to meet difficulties to which he refers?

Mr. Sullivan: If those amendments are adopted which have been suggested the whole proposition is nullified. It becomes simply so much waste paper, that is all. If we accept the amendment it nullifies the last six or seven lines in the resolution and the rest is a useless repetition of the present Constitution. That is my contention. Now, whether or not the committee on Education had any desire to destroy the anti-aid amendment, they are doing it under this measure if these amendments are adopted. But why not adopt the other amendment, as I suggested? Why not submit the question fairly and squarely? There is no doubt but that for years in this Commonwealth there has been a bitter, acrimonious, religious dispute about this aid to education. One disputant says: "We don't want any money for our parochial schools." The other says: "We don't trust you. We are going to prevent your getting it." And then some of our delegates say in debate: "We believe in opening the door wide to all education," and in this educational amendment they have opened it wide to all except the parochial schools. If you want to present something other than the anti-aid amendment, let us present the proper alternative. We have submitted the anti-aid amendment to the people. We cannot recall that if we would. Now, if you wish to recant, if you wish to change, go to the other extreme and submit the two measures and see what the people will do. If you submit the two amendments, and one or both are defeated, then you have settled forever this religious controversy.

Mr. Edwin U. Curtis of Boston: I want to put myself in a fair position with the committee on Education. Individual members of the committee on Bill of Rights may have individual opinions. I have known the chairman of the committee on Education for a great many years. I have known also some of the other members of the committee. I wish it to be distinctly understood by the Convention that I do

not think the committee attempted to do anything which was not right and proper. I do not think that they tried to nullify the anti-aid amendment, although it is my opinion that their work as presented here in this resolution does it. I think it is only right that I should say this, as I have been asked many times if I had that opinion. I do not have that opinion, and I take the opportunity to say so. I do not say that some others did not know it, and I ask that the Convention place the responsibility for not knowing this on the committee on Bill of Rights. We should have known it. We did not know it. If we had known this resolution was coming what more could we have done than we did the day we found it out, namely, come in here and ask to have it advanced, so that we could argue it before, by any possibility, the anti-aid amendment went on the ballot? If we had known it at that time I should have brought in that same resolution at that time and have tried to discuss the two resolutions together, and I wish the Convention to understand that is my personal opinion, and I believe that it is the opinion of the committee that I represent. And now in a perfectly calm, cool manner, I wish to say to this Convention that they have heard the distinguished gentleman from Worcester (Mr. Washburn), the distinguished lawyer from Fall River (Mr. Cummings), the distinguished lawyer from Topsfield (Mr. Wellman) and others in this Convention say one does nullify the other; and taking them at their word, gentlemen, I ask you if you are going to calmly and coolly repudiate your own action of August 22 and pass another resolution that nullifies that one.

Mr. WALCOTT of Cambridge: When this subject-matter was first before the Convention in August I did not speak on it, although a member of the committee on Bill of Rights, because I knew there were more eloquent men in my committee who would speak for it, and speed is a desirable though somewhat neglected quality for this Convention to cultivate. As the question now comes up with resolution No. 309, and it appears that some members of the Convention, though I trust, I believe, very few, are about to change their votes on this measure, I desire to say the case is the same with me as with every other member of that committee. I do not intend to change my vote. I am as convinced now as I was seven weeks ago that it is an excellent measure in every respect and I am not prepared after this debate to change my vote in the slightest. The eloquent words of the gentleman in the second division from Fall River (Mr. Cummings), which I listened to with great interest, seemed to me wholly fallacious, — fallacious in this way, Mr. President. He says that the policy of this measure, that is, the anti-aid amendment, if adopted would be destructive to the Commonwealth of Massachusetts. Why so? Because, as he said to-day: "Fifty worthy institutions will fail to receive State money." There are probably twenty-five hundred other institutions, private institutions, in the State, of a semi-public nature, which will not receive State money. Why does he seek to preserve the present fifty and close the ranks against other equally worthy candidates? Does he think that the theory of paternalism is better than that of self-reliance? Does he think that a man on an allowance from his father is a more valuable citizen than one earning his own living? In my city of Cambridge there are two excellent private hospitals, the Cambridge Hospital under Protestant management, the Holy Ghost

Hospital under Catholic management. Three or four years ago a city hospital was established. Neither before the establishment of the city hospital nor afterwards has either of those excellent private hospitals asked for any money from the city or the State. Does he think for that reason that they are not doing worthy work? Not at all. They have to make their standard an effective and efficient one and excite public interest and get confidence in their management. Does the gentleman from Fall River (Mr. Cummings) think that the Massachusetts General Hospital to-day is any less competent, useful or efficient than it was eighty years ago, when it was given the use of convict labor by the State? It seems to me the fallacy of his statements is apparent on the face of them. Do we want an unseemly scramble before the Legislature year after year as to which charity should be preferred, whether local, perhaps sectional or religious? That is what they have in Pennsylvania. Is that the policy of the State which he thinks will preserve it? It does not seem so to me, Mr. President. It seems to me the policy of the Bill of Rights Committee is the one that will be beneficial to the State, and not destructive.

Now, then, Mr. President, there was another statement of the gentleman from Fall River which seemed to me equally fallacious, — the statement that it was necessary that objects should be capable of aid by taxation in order to be exempted from taxation. I think there is no basis for this argument whatever. In the same Opinion of the Justices (195 Mass. 608), of which the gentleman in the second division (Mr. Cummings) read only the second paragraph, it is stated in a subsequent paragraph that burying-gounds, Bunker Hill monument and halls of the Grand Army of the Republic, can be exempted from taxation "as properly set apart for uses that are quasi-public." Private burying-grounds cannot be supported by public taxes, however, though they may be exempted from them. Why, gentlemen, the fallacy of the statement by the gentleman in the second division is proved by this test. If what he says is true, then since the passage in 1855 of the eighteenth amendment all exemptions from taxation to parochial schools have been illegal. If what he says is true, then since the passage of the eleventh amendment all exemptions from taxation to churches and religious societies have been illegal. The Justices of the Supreme Judicial Court in their opinion (186 Mass. 604) say:

> It is true that the Commonwealth still aids churches or religious societies of every sect and denomination by a general exemption from taxation of their property (see Revised Laws, Chapter 12, Section 5, Clause 7).

There is no answer to that, I submit, Mr. President.

Mr. MONTAGUE of Boston: I believe that this proposition was brought forward by the committee on Education in perfect good faith, but I do think that sometimes matters are brought before us here, as elsewhere, which, with the best of intentions and having in themselves elements of virtue, are not wise when taken in connection with the setting in which they find themselves, and it seems to me that we here have two situations. If the anti-aid amendment should be accepted by the people and this proposition accepted by the people, there would be a conflict which I take it nobody wants. If they both should go to the people, and the anti-aid amendment should be rejected and this proposition accepted, then it seems to me there is at least a possibility of broadening the Constitution in a way which very

few of us desire to have done. But it seems to me that there is one thing that we can do. When the anti-aid amendment was before us I think almost all of us had no doubt whatever of the right being left in the Legislature to exempt religious institutions and educational institutions and the others from taxation. I know that is the way I felt. I did not suppose there was any doubt at all, or I should not have voted for the anti-aid amendment. But the gentleman from Fall River (Mr. Cummings), in whose judgment and wisdom we all have great confidence, and whose character is such that we know he would not suggest anything that he did not think was right, tells us that there is at least a possibility, a probability, a certainty as he puts it, almost a certainty, that the anti-aid amendment if accepted takes away from the Legislature the right to exempt from taxation. Now, if the gentleman from Fall River should be sitting upon the Supreme bench a year or two hence he probably would have the same opinion. And here is something we can do. We all want to have it cleared up; I say all, most of us, want it cleared up and left so that the Legislature may exempt from taxation these various institutions and churches. We want that sure. We want it stated somewhere, if there is any doubt about it, that that right still exists. If we adopt, in my opinion, the second amendment of the gentlemen from Newton (Mr. Anderson), printed at the bottom of page 2, — the second amendment, — striking out this whole proposition from top to bottom and leaving the title alone, that is all there is, just the title, and adopt his amendment saying that the Legislature shall continue to have the right to exempt these institutions and churches from taxation, we shall do something that we all want done sometime, and we might just as well do it here and now and have it done, because if we wait until some other time to put that in we may adjourn and summer may come and it may not be done. But here is a chance to do it right here and now, and it seems to me that that is a thing that is constructive and wise and desirable.

Mr. Sawyer of Ware: I should like to ask the gentleman who is speaking whether, there being a desire to get the anti-aid amendment this year upon the ballot, if we should order this to a third reading by adopting this amendment he suggests, it would not defeat getting the anti-aid amendment on the ballot this fall. In other words, there would be a third and another stage for this. It would be behind other important matters. Before we could finally consider it, it would be too late to pass the anti-aid amendment, and we would not care to pass the anti-aid amendment while this was pending. Therefore, in order to get the anti-aid amendment upon the ballot this fall, it will be necessary to kill this resolution.

Mr. Montague: It does not seem to me that that is so at all. The anti-aid amendment, I take it, probably will go on the ballot this fall. Now, if it goes with this proposition killed it certainly is gone. There is a chance to put this on with it and send the two together; but even if this does not go on the ballot this fall we have shown our intention, we have shown what this Convention wanted and intended to do, and that undoubtedly would have great weight if the other matter should come up before this finally got to the people.

Mr. Clapp of Lexington: I need not tell the Convention that I am wholly in favor of the anti-aid amendment. I spoke in behalf of it and

I voted for it, and I would not for the world do anything to impair its efficiency or cut down its meaning. At the same time I am favorable to the proposition that is under consideration, and I want to see that adopted, if we may do so with perfect safety to the anti-aid amendment. The other day I offered an amendment which, I said, in my opinion would eliminate absolutely any conflict between the two proposals. That amendment was to insert in the twentieth line of the second section, or in the second line at the bottom of page 2, after the word "shall", the words ", save as otherwise and elsewhere provided in the Constitution,". It seems to me clear that those words will eliminate effectively any conflict that there may be. I am asked by interests friendly to the anti-aid amendment to modify my proposed amendment so as to make it read: ", save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution,", and I shall ask that the vote be taken upon the amendment in that form.

The resolution reported by the committee on Education was amended, as shown at the beginning of the chapter, and, as amended, was ordered to a second reading Thursday, October 4.

On Tuesday, the 9th of October, debate was resumed in connection with an order providing for submitting the amendment to the people at the next State election, together with other amendments which had been adopted by the Convention.

Mr. CREED of Boston: This is the first time that I have addressed this Convention: I have the honor to represent in part the Twelfth Congressional District; and while I have deep gratitude that all that district, every portion of it, and every shade of opinion, gave me magnificent support in my campaign for membership in this body, that with eleven candidates on the first of May struggling and striving for place in this Convention, they made me number two in that list and honored me with election, — while I am grateful to the entire district, my nearest and dearest love and affection is for the district in which I was born, and with which I have been identified all my life, the peninsula over there in South Boston, that district which has within its confines as decent, as God-fearing, as upright and as law-abiding people as any other portion of our Commonwealth. I know, and I defy successful contradiction from any delegate from that district, that I, who spend my days and my nights in that district and practically never leave it for any occasion, — and in every interest, banking, educational and charitable, my family have been identified and engrossed with and engaged in that district, — since the 22nd day of August have consulted the people of South Boston, have inquired their real sentiments and their true desires, and I know now that they do not want this anti-sectarian amendment forced upon the ballot at this coming election.

As for my own personal attitude upon this question, my feelings are so intense about the merits of this so-called Curtis-Lomasney anti-sectarian amendment that, to quote the words of a great President on another occasion, I would rather be assassinated upon this spot than surrender my conscientious convictions upon the question. And so, I am in favor of the motion of the gentleman from Fitchburg, and I am opposed to the amendment of the learned district attorney of Suffolk County.

There are two emergency resolutions that this Convention should

place upon the ballot. One is the absentee voting amendment, because, as you know, it cures an unfortunate situation that has deprived theatrical men, traveling men, railroad men, from the opportunity of exercising their franchise in our past elections. But besides that it does a patriotic act. It gives an opportunity to our boys at the front to participate in our civil affairs while they are away on the duty of the country. And as for the public trading amendment, — about fuel, food-stuffs and commodities, — that remedies a constitutional objection of the Supreme Judicial Court, so that our Legislature next winter can cope with any unusual situation that may happen to the inhabitants of our State.

But any other amendment is an amendment that the people will at once ordain, and, if they accept it, incorporate it in the organic law. Why should we place those radical amendments upon the ballot this year? We already know that this year is known in Massachusetts politics as an off year in the election, and there is always a light attendance at the polls. We know that the last primaries, on September 25 last, indicate that our people, engrossed in the troubles and annoyances and perplexities arising out of this world's war, will give a light attendance at the polls in November.

Therefore, is it not wise, is it not proper, to allow these amendments to go over until 1918, and place them on the ballot when in all probability there will be a change in the office of Governor, which will augment the attendance at the polls; when the people, for the first time in three generations, in sixty-four years, will be proud of the opportunity to vote for a symmetrical, whole Constitution, as reported from this Convention? In addition to that, whether we desire it or not, whether it will be wise or not, just as in the dark days of 1862 in the Congressional election, and in the dark days of 1864 in the fight between Lincoln and McClellan, the people will discuss the questions arising out of this great world war, and the attendance at the polls will be increased largely, and there will be an opportunity, so far as that vote at the polls will be binding, to settle this question of the anti-sectarian amendment. I do not doubt that any considerable numbers of the Convention will object to the expense of issuing a pamphlet to explain to the voters, the 650,000 members of our electorate, what this amendment means. I am not referring now to the fact that twenty-one days have been set by the State printer and by the mailing company as the opportune and ample time to get an amendment before the people. We already have had an experience with a conflicting resolution. A week ago last Thursday I called to my seat in this body the chairman of the committee on Bill of Rights, the ex-mayor of Boston (Mr. Edwin U. Curtis), in my division here, and I showed him document No. 309, concealed in the documents of the Committee of the Whole. He was surprised. He had never seen it. He asked me if I had shown it to the gentleman from old Ward 8 (Mr. Lomasney), or the learned district attorney of Suffolk County (Mr. Pelletier), and I told him that I had not. He called on those gentlemen. They went to the docket room and got copies of the resolution, and the next morning they called a meeting of the Bill of Rights Committee at 9.30, and you know the rest. They dragged it from the documents and we have had the consequent debate.

Now, in this pamphlet that will be issued to the voters, I confess I do not know how it is to be made up. I do not know whether in one column there are to be reasons submitted by the adherents of the measure, and in another parallel column the reasons by its opponents, or a composite column on both sides. But what I fear is that if we have had one conflicting resolution to the anti-sectarian amendment, in the hurry of getting up this pamphlet some paragraph will creep in there which may inflame the people of the Commonwealth, or it may be so misleading, so vague and so indefinite, that, delivered to the voters a day or two before the sixth of November, they will take it, reading it hurriedly, as an instruction either to vote for or against this amendment.

So I say that we should pause before we force this anti-sectarian amendment upon the ballot.

In addition to that, just before election, the first of May, I called upon my personal friend, the judge of the South Boston court, the Colonel commanding the Ninth Massachusetts Regiment, now known as the 101st United States Infantry, on duty in the trenches of France at the present time. I said: "Colonel, if it is not opposed to your discipline and your military arrangements, I should like to have you give a furlough to the soldiers of your regiment so that they can vote in the election for delegates to the Constitutional Convention." And Colonel Logan replied: "While my paramount duty is to look out for the military arrangements, I desire my boys, while they have an opportunity, to participate in the civil affairs of this Commonwealth." He gave them a furlough, and as a result, I told the candidates for local delegates, and automobiles were sent to the Fore River Shipbuilding Company at Quincy, the Watertown Arsenal at Watertown, and other places, and the boys in khaki came to our district and cast their votes for delegates to this Convention.

Do you think it is fair, do you think it is wise now, when those boys helped to elect men to this Convention, while they are away three thousand miles in France, to force an amendment which is a change, and a fundamental change, in our organic laws? And while this is a non-partizan Constitutional Convention, and while every one here lays aside his party allegiance before he crosses the threshold to come into this chamber, it may not be amiss to point out to those of us who, when we cross the threshold at the recess, will again resume allegiance to the Democratic party, that last Saturday in the Convention, in the platform of principles of the Democratic party of Woodrow Wilson, down there in the megaphone of liberty, in Faneuil Hall, they put in a plank which asked the delegates in this Convention to put upon the ballot, — and it was presided over by the ex-Governor in the second division, — to put upon the ballot the public trading amendment, the absentee voting amendment and the initiative and referendum amendment; and the Democratic party, of which I am proud to be a member, made no reference to the anti-sectarian amendment.

Now, I believe these reasons are sufficient, and all sufficient, so that the amendment of the district attorney from Suffolk County should be defeated.

But I believe there is a more serious objection to the passage of this amendment. One day last summer in debate in this Convention we

heard about a resolution which was referred back to the committee on Public Affairs. That resolution concerned the conservation of the natural resources of the Commonwealth in which we live. I ask the gentlemen of this Convention to pause and weigh well whether they should not conserve the greatest source of power in the Commonwealth, the true unity of all our people. Two or three weeks ago we were asked to contribute to a library fund to purchase books and papers for the boys to while away their lonesome hours in France. Do you want the papers of this Commonwealth to be sent across the waters containing statements which may bring sorrow and anxiety to the relatives of either the adherents or opponents of this amendment? Do you want letters from the fathers and mothers, the sons and daughters, the brothers and sisters of those boys in France, to be written over there, saying that things are being said by one side and the other back here, by the folks at home? No; that is something that is not desired by any patriotic member of this Convention.

Now, I regret that my old friend, the gentleman from old Ward 8 and now Ward 5, is not here this morning, because he saw fit the other day to make —

Mr. MANCOVITZ of Boston sought recognition.

Mr. CREED: The gentleman heard my opening paragraph. I have not taken up the time of this Convention since June 6th. He need not worry that I will say anything concerning his colleague from old Ward 8 (Mr. Lomasney). I want the gentleman to understand that as I get older in life I become more mellow, more charitable, with less of the aggressiveness of the fighting race of which I am a member. [Applause.] But I would not sever lightly the political and personal relationship of a lifetime. My family, personally and politically, have been identified with the gentleman from old Ward 8, I think longer than the member who tried to interrupt my argument that I am making to this Convention.

I will cite one concrete illustration, and I know my brother-delegates will pardon me for bringing it into this Convention. Our family have had the honor of coming from the only legislative district in Massachusetts, — yes, they tell us, and I believe it, — from the Atlantic to the Pacific, that sent five brothers to represent it in the Legislature of Massachusetts. And every time, Mr. President, that we ran for office we were confronted with this charge by our political opponents: "Don't vote for Creed, because, while Ward 8 has two representatives, and Ward 15 has two, if you vote for him Lomasney will have three and Ward 15 will have but one." That shows my relationship with the gentleman from Ward 8. But when he saw fit on the floor of this Convention to try to chastise the band of nine Roman Catholic delegates who exercised their conscientious convictions to vote against an amendment which he fathered in part, I want to say, and I would have said it to him if he were sitting there, and I want to say it on the floor of this Convention and not in the corridors of the State House, that if he will select a time in his ward, — and I prefer his own Hendricks Club, — I will go there, while he is a giant and I am only a Lilliputian, and I will debate with him whether his resolution is or is not an unworthy compromise.

I hold in my hand a paper. It is the written account of a speech delivered in Congress by Hon. James A. Gallivan, on Monday, Febru-

ary 26, 1917. I will crave the indulgence of the Convention while I read you some short extracts from it. It is a speech entitled "The Nuns of the Battlefield," on a joint resolution granting permission for the erection of a monument in the Arlington National Cemetery, Virginia, to the memory and in honor of the members of the various Orders of Sisters who gave their services as nurses on battlefields, in hospitals, and on floating hospitals during the civil war. In this brilliant speech Congressman Gallivan said to the House of Representatives:

> And these heroic women who abandoned home and all the things dear to their sex, . . . the ministering angels who gave the best they had to soothe the agonies and bind up the wounds of the victims of battle, — what of them?
>
> Far from the clamor and glory of battle they worked in the shuddering shambles of the conflict's aftermath. Living amid the foulness and pestilence, working with a courage and calm worthy of the most heroic, they faced sights calculated to chill the hearts of the bravest. No patriotic service rendered by the best and the bravest counts higher in the estimate of Heaven than the ungrudging and unlovely toil the nurses of the civil war were subjected to.
>
> Those splendid and heroic women knew no north nor south in their ministrations; they only knew the wrecks of battle were men and brothers, calling for their tenderest care and noblest efforts, and who, remembering the dreadful days and awful nights of the military hospitals established in the wake of battle, will deny these women the highest recognition a grateful country can give?
>
> The nuns of the battlefield were neither of the north or the south in their ministrations; they served humanity; and their love and labor were lavished as freely and generously upon the wounded soldier in gray as upon him who wore the blue. They recognized and served all without distinction.
>
> They have earned the title to this little bit of space out there among those whose hours of pain they lightened, whose dying hours they made happier and sweeter; and if there be gratitude among men and honor among soldiers, the boon they ask will be theirs.

Why did I read the extract from that speech? Because the first exemption of the Curtis-Lomasney amendment relates to the Soldiers' Home over there in Chelsea. That was a wise, patriotic, grateful exemption. I believe in doing all we can for the men who are enfeebled by disease, and disabled mentally by their patriotic service for their country. I desire to do anything, and I did it when I was in the Legislature, for the benefit of the men who walked by the steps of this State House with the Godspeed of the war Governor Andrew in their ears, going forth to fight for liberty and human rights, and to keep this Republic of ours, as our Supreme Court in Washington said it was, an indissoluble Union of indestructible States.

But, Mr. President, let us look into the future. Thousands upon thousands of the black-robed, white-bonneted sisters of charity and of mercy have volunteered to our President at Washington to do service on the field with our armies. Let us look further, and come with me, if you will, to the end of this fearful conflict; because there will be an end, gentlemen of the Convention, and God grant that the end will be soon. Then these sisters will come back to their communities, some of them impaired in their physique, enfeebled in their minds, on account of the privations, toil and disease that they have encountered in their work for their country. Let us assume that a grateful, patriotic people will gather together and by subscription build and maintain for them a home, the disability home for nun nurses; and then later the same patriotic, generous people of the Commonwealth will come up to this Legislature and ask them to appropriate money for

the maintenance of that institution. Then I trust that those legislators of that future day, with intelligence in their make-up and with justice, I hope to God, in their hearts, under their oath will listen to the merits of that appeal and will grant the appropriation; and in the corner of this building I hope there will be a Governor, a chief magistrate, who will be actuated by the same noble sentiments, who will believe with Robert Ingersoll, that gratitude is the fairest flower that sheds its perfume in the human heart, and who will sign the appropriation.

Then what will happen? Under the Curtis-Lomasney anti-sectarian amendment ten citizens of the Commonwealth, — and I am not here to say anything incendiary, I will not say they belong to any organization, I simply will call them strict constructionists, — will apply to the courts, and the State Treasurer will be enjoined from paying out that appropriation, because a just, generous, patriotic Legislature will have no right under the Curtis-Lomasney amendment to appropriate money as a partial recompense to those women for the patriotic service they have done for their country.

On the 15th day of August I listened in this chamber to a speech by the gentleman from Newton. On that very day another speech was being delivered in this country. On the 15th of August, the very day the gentleman from Newton delivered the speech which was so ably answered by the delegate from Fall River, — who, I regret to say, is not here speaking in my place, but through the unfortunate affliction in his family, as he notified us Sunday afternoon, cannot be here until next Thursday, — the very day that the gentleman from Newton was giving that speech Senator Gerry of Rhode Island was speaking in the United States Senate. He was speaking to his amendment to the war tax bill, which exempted legacies to charitable and religious organizations from the operation of the Federal inheritance tax law. I regret that I have not the actual report here, but the gentleman from Quincy, the monitor in the third division, to whom I showed the clipping, will bear me out that I am substantially repeating his language.

Senator Gerry said: "I think the day is coming in this country and that the trend of public sentiment is that philanthropic, charitable and benevolent work will be better done, and is being better done, by private institutions, under the fostering care of the Nation and the different Commonwealths. Take, for example, the case of the Sisters of Charity. Is it not a fact that they do the work, giving one hundred cents of value for every dollar they get, in a charitable, benevolent, kind, sympathetic way, without in any way putting the stigma of pauperism on the people who receive it? And the day is coming in the Nation when that fact will be recognized, and when the private wellsprings of philanthropy will be encouraged and fostered by the Commonwealths and the Nation."

I have trespassed a great deal on the time of this Convention, on a matter that is not on the regular calendar, but I want to say this in conclusion. I earnestly appeal to the delegates of this Convention to vote down the amendment of the learned district attorney of Suffolk County. I ask it as a citizen who loves his native Commonwealth, as a delegate who never in his life, public or private, propagated any doctrine that created discord or disunion among our well-

meaning people. I ask them, as an American citizen whose only hope is that when the word comes in France to advance against the common enemy, the militaristic element of the German Empire, that the relatives of the adherents of this measure, and the relatives of the opponents of this measure, in the ranks, like the men from the north and the south of Ireland, will go over the top together and crush and overthrow for all time the despotic, autocratic element that dominates and misrules the German people.

Now, in conclusion, as long as we have been referred to in debate as the nine Roman Catholics who voted against the anti-aid amendment, out of the 94 Catholics in this Convention, I appeal to this Convention as a Roman Catholic, a native son of Boston, and a citizen of Massachusetts, whose every emotion is permeated and suffused with, whose every fiber of his person breathes, unswerving loyalty, unflinching fealty, and allegiance to those two flags we all love so well, the emblem of our country, the Stars and Stripes, and the white banner of this beloved old Commonwealth, — I ask in the name of peace and concord, and the happiness and the unity of our people, on the threshold of our entrance into this world war, — to vote against the amendment offered by the learned district attorney of Suffolk County, and not to jam this amendment on the ballot at this coming election. [Applause.]

Mr. PELLETIER of Boston: I was asked to present that amendment after I had presented the other one. I do not think there will be any disagreement on that. That is the little clause of four or five lines which says that the Legislature as heretofore may exempt social, educational, scientific and religious institutions from taxation. That is all it is. There is not a man here, there is not a voter in the Commonwealth, I believe, who would object to those four or five lines.

Mr. BROWN of Brockton: Does that amendment mean that no other churches which may arise in the future are to receive exemption? It says: "Continue." Does that mean only what we are now doing?

Mr. PELLETIER: As I understand it, it gives the Legislature the right to exempt churches and other institutions as it has in the past; not necessarily only the present institutions, of course, but to exercise that same right and power as it has in the past. It cleans up and clears up any doubt; and I hope that the Convention will amend the measure of the gentleman from Fitchburg by adding also those four or five lines.

Mr. BROWN: Can the gentleman tell how much each thousand dollars of valuation in this Commonwealth gave away last year, and how much on each thousand of the valuation does the exemption represent? I suppose the committee must have had that before them.

Mr. PELLETIER: I cannot answer the question; and if the gentleman told me I would not remember it two minutes. [Laughter.]

Mr. SWIG of Taunton: I do not believe that this question requires the display of any eloquence, or the defence or advocacy of any political party, and neither does it require the waving of the Stars and Stripes, in order that the members may understand the proposition that is before them.

The only question after all that we have to consider is whether or not we shall adopt the order as amended; and that is a very, very simple proposition.

Very fortunately for me, — and it is one of the few fortunate experiences that I have had in relation to the faith that I profess, — I can look upon this question in a calm, dispassionate way; because I am not concerned, in a way, in the troubles that have existed between the Protestants and Catholics, except that as a citizen of Massachusetts I should love to see this question settled, I should love to see peace and harmony reign between those two factions of Christianity, I should love to see all of us living in unison and not to have any disturbing questions such as this question of sectarian and non-sectarian appropriations. And so I say that very fortunately for me, indeed, I can look upon this question in a calm way, unmoved by any religious prejudices or sentiments.

Now, the proposition is a simple proposition that is covered by the Curtis anti-aid amendment. It is something that will not need any great debate or deliberation by the people, because it is so simple that every voter will understand the proposition; namely, whether or not the State wants to grant money, public money, for private institutions. That is a simpler proposition than any proposition that will come before the people under this whole order.

Mr. Brown: I should like to ask the gentleman if he thinks the voters would be concerned as to whether they were giving away seventeen cents on each one thousand dollars of valuation or whether they were giving away $17 on each one thousand, and whether the voters are so far non-commercialized that it would make no difference to them.

Mr. Swig: I believe the voters will not care whether it is seventeen cents or seventeen dollars on a thousand; that their only thought will be whether or not they want to give public money, if only one copper, to private institutions. [Applause.] And that is the only question, and a simple question, — much simpler than the question as to whether or not the State should go into the public business of feeding and clothing the people, much simpler than the question of absentee voting, — because as the amendment has gone through here it provides for more than voting for soldiers and sailors. This Convention has allowed itself to be carried off its feet, just because the resolution gives the soldiers and sailors the right to vote. The Convention did not give the matter the consideration it should. And this morning another attempt has been made to do something we should not do under the guise of giving something to the soldiers and sailors.

Now, let us act on this proposition simply on the merits of it. Let us not allow those who have opposed the Curtis anti-aid amendment from beginning to end to use this as another means of injuring this resolution.

As I had occasion to say the other day in another respect, it seems very peculiar indeed that those people who were opposed to the anti-aid amendment were taking the initiative in urging another, — the educational amendment; and this morning those men come here and try to persuade you not to put on the ballot the very first bit of business that we did. Are we, the delegates in this Convention who have settled this question, going to allow ourselves to be influenced in any such way as that?

I ask you, Mr. President, and the gentlemen of the Convention, not to be moved by any such appeals as have been made here this morn-

ing; not to allow yourselves to be moved by any religious sentiments or take them into consideration; but do as I thought we were going to do when we came into this Convention, leave religion and leave politics aside, and judge questions entirely on our citizenship. If we do only that, I feel quite sure that every delegate here will see his way clear to send this question to the people at the polls in November. [Applause.]

Mr. BLACKMUR of Quincy: I agree with so much of the statement of the gentleman in the first division (Mr. Swig) wherein he says that this is a simple issue. It is a simple issue, and I, for one, do not intend to go into the relative merits of the proposition, but simply answer the question as to whether or not this is an emergency measure. Because, apparently, we have agreed upon one thing, namely, that there ought not to go on the ballot this fall any resolution that is not an emergency measure.

The question as to whether or not this is an emergency measure is answered in the resolution itself. I refer to section 5, which provides that this amendment shall not take effect until the October first next succeeding its ratification and adoption by the people.

Now, Mr. President, in the face of that provision, how can any one claim that it is an emergency measure if it is not to take effect until a year from now, even though the resolution be adopted by the people?

One other fact in that same line. My friend, the learned district attorney in this division (Mr. Pelletier), says that the people of this Commonwealth have been surfeited with arguments on this anti-aid amendment. I rather think that the gentleman inadvertently stated the proposition incorrectly. It was not the anti-aid that has been debated throughout this Commonwealth for years; it was the non-sectarian amendment which has been debated, and which has been entirely understood to be the question for us to settle.

Now, Mr. President, there is a great distinction between the anti-sectarian amendment and this one, which is not only an anti-sectarian amendment, but is really an anti-aid amendment in conjunction with it. The anti-aid part of the measure has not been discussed and has not been thoroughly understood by the people of this Commonwealth. We have the very best of evidence of that because only within a very short time the head of one of the greatest churches in greater Boston came out for the first time and stated that the amendment as it was finally drafted and passed by this Convention was really an "unworthy compromise." That statement was made by a gentleman of great learning, a man of capacity and ability, and a man who is tremendously interested for his church in this question. That it was not made until recently, shows that there is much in this amendment that the people of the Commonwealth have not understood and ought to have the opportunity of examining.

Another fact. The gentleman who offered this resolution stated that we ought to sit here and finish our work. Very good. If we are to stay here to finish our work, Mr. President, what opportunity is to be given us to go out among our constituents and explain this anti-aid amendment? No opportunity whatever. The gentleman in the first division, in his speech made the very pertinent inquiry as to what form these proposed pamphlets would take, what opportunity would be given to the friends and the opponents of this measure as it was

finally drafted to set before our constituents their views on this subject.

I believe, to go back to the first proposition, that there is absolutely no exigency here, no emergency, no reason to now send this resolution to the people. The good old Commonwealth has sailed along serenely for many years without the help of this anti-aid amendment. Is there any great danger in withholding this aid for another year? Considering the clause in the resolution which provides it shall not take effect in any event for nearly one year, I say "No." And I appeal to you, gentlemen, to let that amendment wait and go on the ballot with the other amendments at a later time. Give us an opportunity to explain to our constituents the full meaning and purport of this resolution, and if they adopt it we will all accept it and try to live under it, I hope, happily evermore.

Mr. PARKER of Lancaster: I have been surprised and distressed, deeply so, when from time to time in the course of the animated and earnest debate upon the so-called anti-aid amendment it has been suggested that the resolution as reported by the committee suggested or imported any suspicion or distrust of the attitude or purpose of my Catholic fellow-citizens and brethren. Sir, if I thought this resolution had its source or took any impulse from such unworthy suggestion or conception I dare reverently to say that no one of my Catholic brethren would denounce the measure or discard it with more bitter scorn than I would. Because, sir, I believe that this resolution as submitted by the committee is evidence of most generous sacrifice of all temporal interests by my Catholic brethren, because they believe that through this sacrifice of temporal interests, they, with the rest of our fellow-citizens, are offering something for the secure welfare of their Commonwealth, I stand for this measure; no compromise, as I conceive it, of principle, but concessions of temporal advantage, of material interest, upon which is laid the sure foundation of the security for all time in the heart and thought of our people of this great question of religious faith, which if ever tainted or contaminated by temporal or material interests may at any time be thrown into the dust of the arena of political, passionate, or prejudiced controversy.

For these reasons, sir, briefly and all inadequately stated, I trust that the amendment of the gentleman from Boston may be accepted, and this measure, happily reaching, as I believe, the final approval of this Convention and of the people of the Commonwealth, may go for their ratification without delay.

Mr. LOWE of Fitchburg: I rise simply to make a short statement. This resolution was introduced with no idea of any unfairness to any of the resolutions. I am as strongly in favor of the anti-aid resolution as is the gentleman who has just taken his seat; and I hope that the I. and R. will be so developed, so perfected, that I shall be able to indorse it as strongly as I can the anti-aid, and vote for it.

Mr. PELLETIER of Boston: A statement has been made here that ought not to go unanswered on the record, and it may be that it has affected the opinion or judgment of some one here. Some one on the floor here has painted a picture of those returning from the front, particularly the Red Cross and sisters who come back here in a poor state of health, and has pictured their awful condition of neglect by reason of the anti-aid amendment. I simply want to say to that

gentleman, and to every one here, — I hope they all know it, I hope he is the only exception, — that under the Curtis amendment those people coming back from the war can be cared for by the State in the most magnificent hospitals that are now in existence, or the State or any city or town can build and maintain for them institutions worthy of their wonderful sacrifice.

I thought it best to state this, because that attack is being made along the line that our hospitals will fail, that we cannot help the worthy and deserving. That is not so under the Curtis amendment. They can all be helped, the State can build and maintain special institutions for them; and that sort of argument ought not to be made.

Mr. ANDERSON of Newton: If the proponents of such a resolution as ours really want it put on the ballot this fall, why I think that the Convention ought at least to most seriously consider the whole matter. There has been enough debate on this measure, as far as the anti-sectarian feature of it is concerned. For twenty years the thing has been discussed in this State. And as far as the private institution side of it is concerned, the clear-headed gentleman from Ward 5, who usually sits in this division (Mr. Lomasney), put forth an amendment of this sort in 1915 in the House of Representatives. It was really a brilliant idea of his, something which now has formed the basis of this great treaty of peace, and it was discussed thoroughly in the Legislature of 1915, and that debate was sent broadcast over the State in the newspapers. And ever since, that matter has been discussed more or less all through the State at public meetings and in the newspapers.

I wish to tell my positive reason for believing that we ought to put this on the ballot just now. We gentlemen of the Bill of Rights Committee, talking to each other across the table, learning each other, learning each other's views, beginning an era of mutual understanding in this State which we never have had before, came at last to the unanimous report which, when it was announced, was greeted with great applause in this Convention. That treaty of peace stands solid, every member of the Bill of Rights Committee stands for it to-day just as he always has stood for it in the past. We have, indeed, been attacked on both sides by extremists, — on both sides, — and it seems to me as though the moderate, liberal, solid men in this State must get together behind this great treaty of peace, against the extremists, and put the matter into the Constitution in such a way that we shall have harmony in this State. Now, just because of what the extremists have done, it seems to me almost necessary that we should put this amendment on the ballot in November, because if we are going to have appeals to prejudice and passion let them be brief, — let them be brief. If there is going to be anything disagreeable in this campaign let it be a campaign of three or four weeks at most. And that is the answer to the question about the soldiers, too.

Mr. LOWE of Fitchburg: I should like to ask the gentleman from Newton if he believes that this anti-aid resolution will gather friends during this coming year, — I believe that is the greatest reason why it should be left off the ballot. If he does not think that the anti-aid resolution will gain friends during the coming twelve months, and if it will not gain friends during the next twelve months, will the people of this Commonwealth, at the end of twelve months from now, wish that they had not accepted it?

Mr. ANDERSON: I wish to say to the gentleman from Fitchburg, whom I acknowledge to be one of the best friends of the anti-aid amendment, and my own friend, that I have seriously considered that matter, and I do believe that on the basis of argument we should gain friends right straight along in this State, if it should be two years before it were adopted. But at the same time I see also that if we are to meet the campaign of religious prejudice and suspicion there may be such an amount of sapping and mining during that time as to very largely, if not entirely, overcome the advantage that we should have in leaving the matter off for one year.

Mr. MANSFIELD of Boston: From whom does the gentleman charge that the appeals to passion and prejudice would come, and in what form?

Mr. ANDERSON: I have repeated already in my speech from whom I think it will come. It will come from the extremists on both sides.

Mr. MANSFIELD: Will the gentleman be candid enough to explain to the delegates here whom he includes in that phrase as extremists? Does he include, Mr. President, the gentlemen whom he said he represented, in a speech here some weeks ago, whom he described as 100,000 noble Minute Men? Does he refer to the gathering of patriotic societies which met in Tremont Temple quite recently, and where I think the phrase "extremists" first was used?

Mr. ANDERSON: I am delighted, Mr. President, that the gentleman has asked me that question. It gives me an opportunity to say what I long have wanted to say but did not think it was quite germane to my speech to-day. I want to say what I said two months ago, that the American Minute Men are not an A. P. A. society. I want to say that they were not represented in Tremont Temple. I want to say that I never was an A. P. A. and that I fought against A. P. A.-ism in the city of Rochester with all my might, and I always shall. [Applause.] Of course, some of the A. P. A.'s, — or those who hold A. P. A. sentiments, for the A. P. A. is dead, of course, as an organization, — those who hold A. P. A. sentiments are a good many of them going to vote for the amendment, of course; but some of them are not going to vote for it. Why? Because they are bound to have just what they started for and nothing else, and are unwilling to compromise. Now, those men are going to be extremists, are going to inject trouble into this affair.

I wish to go one step further than I ever have gone before, in answer to the gentleman from Boston, — as I understand he is, — in the fourth division. I want to say that I do not believe in any sort of class or race or religious prejudice. I thank God that I have no race prejudice in me! I suppose that was due to my father and my mother, to the education that I received; nothing, I think, which is specially laudable in me in that particular. But that is the fact. I have no race prejudice whatever. And I wish to go farther and to say that when any race or sect or creed comes to have a quarter or a third or a half of the people of this State, — while I do not believe that the Governor ever should take into consideration any man's religion or race in appointing a man to office, and while I do not believe that any voter in the booth ought to think of a man's race or creed in doing his voting, nevertheless, when a race or creed has one-quarter or a third or a half of the people of this State, it is only natural and right

and just that they should have a quarter or a third or a half of the offices in the State, if they are capable of doing the work which those offices impose.

Mr. Blackmur of Quincy: Does the gentleman from Newton believe that for the proper consideration of the anti-aid amendment by the people it is necessary or advisable to put upon the ballot at the same time the amendment or resolution for the encouragement of literature, or his resolution exempting churches and other like property from taxation?

Mr. Anderson: Again I am delighted in being asked a question. I had almost forgotten to speak of it, and I thank the gentleman for reminding me. When the gentleman from Fall River (Mr. Cummings), in whose deep affliction we all are afflicted to-day, spoke in reference to the taxation of church property as being perhaps involved in the anti-aid amendment, he did not move the minds, I found out, of any of the committee on the Bill of Rights; he did not move the minds, I found out, of four-fifths of the lawyers in this Convention; he did not answer the learned judge from Cambridge, who sits in this division (Mr. Walcott), when he mercilessly broke down that argument; and yet he did raise a doubt in the minds of the people of the State, though not in the minds of the people here in the Convention, because it went out all over the State. Consequently, the Convention that votes by a majority of 192 to 62 to record their firm conviction that the Legislature now has the power to exempt from taxation, wish the people to reaffirm that, so that the popular mind may be altogether at rest in reference to it.

Mr. Brown of Brockton: Would the gentleman favor placing the anti-aid amendment on the ballot if the amendment he is now talking on is not ready to go there?

Mr. Anderson: I think it is perfectly safe, even if this exemption amendment does not get to the ballot this fall, to go right ahead with the anti-aid amendment. I think it is perfectly safe to do it.

Mr. Underhill of Somerville: I have followed the gentleman from Newton through all of the controversy on the anti-aid amendment, and I have taken his advice in practically every turn that has been made. But we must part company on this one question, whether it is advisable to submit the question this fall, or whether it is better to let it go over. And in taking this position I wish to remind the gentleman that this committee on Bill of Rights, with their feet under the same table, discussing this subject from day to day, were unable to come to a conclusion on the matter in the length of time which he now allows for the people of the Commonwealth to come to a conclusion as to whether they wish to accept or reject this proposition.

But that is not my chief reason. My chief reason is this: That when the delegates to this Convention were elected there were two great questions before the people. One, as he states, was the initiative and referendum; and the other was the anti-sectarian amendment. And I believe there was as much, and I think I can say there was *more* interest in the anti-sectarian amendment than there was in the initiative and referendum; I believe that more delegates were elected to this Convention on that issue than were elected on the initiative and referendum issue and I believe the people of the Commonwealth understood the sectarian resolution very much better than they understood the initiative

and referendum, for up to the time of the Convention the initiative and referendum had been argued only from one side, whereas this other question had been argued on both sides.

Now, sir, the reason I believe this resolution should go over is because the initiative and referendum in a measure affects it. If the people adopt the initiative and referendum, why, there is absolutely no use for this Convention to take any other measure into consideration, for the people will have it in their power to do about as they please from year to year after the adoption of that measure.

Mr. BROWN: Is it the gentleman's contention that the State shall do nothing until 60,000 people get ready to do it?

Mr. UNDERHILL: That is not my contention. I do not believe in 60,000 people doing these things, and the gentleman knows it. I am opposed to the initiative and referendum in any form, and I do not believe I have to inform the members of this Convention of that fact. I am absolutely in agreement with the gentleman from Newton in his anti-sectarian amendment, and I think the committee and the gentleman himself are entitled to a great deal of credit for presenting a solution of a question that has bothered this State for a great many years.

The resolution was discharged from the Orders of the Day Wednesday, October 10, and was read a second time.

Mr. Arthur H. Wellman of Topsfield moved that the resolution be amended by substituting the new draft cited at the beginning of the chapter.

Mr. COOMBS of Worcester: I am very much in favor of the amendment offered by the chairman of the committee on Education. If the members will notice, they will find under No. 87 my name appended in a certain way as the proponent or sponsor of the resolution as it stands. I wish to disclaim all responsibility for No. 87 as it stands at the present time. If you will note, No. 87 as it stands at the present time is merely a substitute enabling churches and certain other institutions to be exempted from taxation, — an excellent measure in which I have the fullest sympathy, but a measure which has no place here, it seems to me, as taking the place of the very excellent amendment submitted by the committee on Education and voted down last week. There was discussion of our amendment which came in under my name as proponent. The amendment suggested by the chairman of the committee on Education to my mind is an amendment that should be adopted. I have no idea that it will be adopted. The temper of the Convention seems to be against incorporating into the Constitution as it may be revised anything directing in a broad way the encouragement of learning, literature, and so on. I think that a deplorable fact. Last week there was criticism aimed against the committee on Education, against me personally, possibly veiled in this Convention chamber, far from veiled outside. One Boston daily accused me of trying to put something over the committee on Bill of Rights in the interest of the institution with which I am connected and have been connected for almost thirty years. Another, not a daily, but a weekly, criticized our committee as playing into the hands of the committee on Bill of Rights, as trying to foist upon the people at the election the so-called sectarian amendment prepared by the committee on Bill of Rights. So that on the one hand our committee and I are accused of opposing the committee on Bill of Rights, and

on the other hand we are accused of playing into their hands in order to administer a slap at a prominent and splendid part of our population. And here on the floor of this Convention, Mr. President and gentlemen, our motives have been attacked; *my* motives have been attacked. A week ago to-day or two weeks ago, — I think it was a week ago, — a member on this floor said that the committee on Education had smuggled words into our report, as though our report, laid before this Convention, subjected to the keen criticism of over three hundred men, could get by with those smuggled words. At the same time a member of this Convention accused our committee of being under the influence of the president of Harvard University. The president of Harvard University can stand on his own feet and speak for himself, and I will back his record against the record of that member of this Convention who made that accusation. We were told that our committee on Education were under the influence of the Board of Education, that we took hints and suggestions from the Board of Education. Why should we not, in Heaven's name? Do not other committees ask for support from people outside who are interested? Suppose we did ask support and suggestion from the Board of Education. I am not ashamed of it. We advertised our hearing; we asked anybody interested to come in and speak for or against the measure that we had under discussion. Some came in, some made suggestions; some members of this Convention came in and made suggestions. We welcomed them. We did the best we could to incorporate those suggestions into our amendment as submitted.

Now, Mr. President and gentlemen, I tried a week ago when I spoke here to make my position clear, to make clear the position of our committee. We had our meetings. At most of our meetings every member was present. At the last meeting two or three members were not there. I have no quarrel with two members of our committee who stood up the other day and wished to register their protest as a minority. They speak for themselves. I have no quarrel with them; but ten or eleven of our members are unanimous in bringing in our report. We had no idea of controverting or contravening the report of the committee on Bill of Rights. I wish, gentlemen, I had known as much about some of the things that went on at the time we were discussing that report of the committee on Bill of Rights; I should have said some things and I should have voted differently. I may say that I never have seen such steam-roller methods in my experience, — not excessive, I admit; and whatever I may have felt at that time, I regret now that my name is recorded as approving the report of the committee on Bill of Rights, and I honor the men who voted against it and I honor the men who since have spoken against it. And I may say further that I, — and I speak for at least ten members of our committee on Education, — appreciate the sympathy of the delegate from Brockton (Mr. Brown), the sympathy and the warm support of the delegate from Arlington (Mr. Brackett) who rose the other day and spoke in behalf of our report, the report of the committee on Education. We were accused of being actuated by sentiment, — by sentiment! Cut it out of the Constitution merely because it is sentimental! Well, there were 60-odd men the other day who voted that they would not cut it out even though it was sentimental. I have no doubt what I say will have little weight in the deliberations or action

of this Convention. For my part I shall support to the last ditch the amendment submitted by the chairman of the committee on Education. It incorporates the substance of our original report. I defy any member of this Convention to show a single detail in which it controverts or contravenes or tends to upset the report of the committee on Bill of Rights. The saving sentence added at the end, it seems to me, clears our committee, clears this amendment as suggested of every suspicion. The report is there before the Convention; will you take it or will you leave it? It may be I have gone somewhat into detail in regard to my attitude toward the report of the committee on Bill of Rights. I speak for myself. I have not the slightest objection to the incorporation of the clause having to do with taxation. But, gentlemen, do you want to go on record as letting that go out as your idea of what should be incorporated in the Constitution as encouraging literature, and so on, that there shall be no hindrance to exempting certain institutions from taxation? I hope that you will give full consideration to this, I hope that you will give it full support. As I said, I have no idea that you will adopt it but, as I say, my vote shall be recorded for it, and I hope that at least eleven of our fifteen members of the committee on Education will be recorded for it.

Mr. KILBON of Springfield: Not being a member of either of the two committees which apparently have fallen into some suspicion of each other, and having in mind only the facts of the case, I want to speak in behalf of the amendment offered by the gentleman from Topsfield (Mr. Wellman). I want to call the attention of the Convention to the ridiculous nature of the proposition which now stands before us with its great sounding title regarding "Universities and Colleges, and the Encouragement of Literature" and that one little measly sentence, — not unimportant, not unvaluable, but very small by way of comparison with the title, — that we continue to allow the Legislature to exempt from taxation property that is used for educational purposes. Is that really all that the members of this Convention care about education? Do they care about education so little that they want to repeal the charter of Harvard University?

Mr. ANDERSON of Newton: Does the member understand that if the amendment is carried in the form in which it is now proposed, chapter 5 of the Constitution as it stands now will remain?

Mr. KILBON: I do not so understand, Mr. President.

Mr. ANDERSON: May I inform the member that that is the fact?

Mr. KILBON: I am glad of the opinion of the gentleman from Newton, which I respect and honor. I did not read the article that way. If chapter 5 is to stand the objection is less serious, because chapter 5 may be left as an historical monument carrying with it the charter of Harvard University, which is its only practical value in the present day; or we may state, in a way which is perfectly safe and sane and serious, the present attitude of the Commonwealth of Massachusetts regarding education, which is that all our higher institutions of learning and all our means and opportunities for the education of the children of our people are prized by us and fostered by us; that while we do believe that circumstances make it necessary and wise for us no longer to carry on at the expense of the Commonwealth in any part institutions which are not controlled directly by State officers, nevertheless we do believe in them and we wish to continue them, we wish

to encourage them, we wish that their rights may be maintained. And I sincerely trust, — for I am very sure that many members voted the other day under a misapprehension of the real meaning of their action in substituting words which they would have been satisfied to append to the resolution, — I hope, more than the gentleman from Worcester in the third division (Mr. Coombs) hopes, that this amendment may gain support which will carry it on to the ballot in the form in which it now stands, a form in which it cannot possibly be interpreted, it seems to me, to be in any wise in conflict with the anti-aid amendment.

Mr. Edwin U. Curtis of Boston: I thought, Mr. President, the day this matter was under consideration before, that I had expressed for myself and for the committee regret that anything should have been said that would have impugned the action of the committee on Education, — anything that was said to make the Convention believe that they had done anything that was not straight and right; and I do not think it is necessary for me to reiterate that statement now. If the gentlemen will take the little book on the Constitution and look at page 58, chapter 5 of the Constitution, they will see there that the first and second sections are embodied in section 1 of this amendment offered by the committee on Education; that section 2 of the amendment offered by that committee is embodied in section 2 of chapter 5 on page 61 of this little book. If the amendment offered by the chairman of the committee on Education is passed, then resolution No. 87 is wiped out, no longer before the Convention; and if it is passed, chapter 5 as it appears in this little book is wiped out also. In other words, the amendment offered by Mr. Wellman takes the place of the whole of chapter 5 and also disposes of No. 87; and as we are now in a position to put No. 87 on the ballot, and as amendments can be made at the next stage, I hope it will be passed to a second reading just as it is.

Mr. Wellman of Topsfield: I think the last speaker unintentionally made a very strange error. There is no question whatever that this amendment does not in any way interfere with the taxation amendment. The language of this amendment provides that it is to be inserted prior to the taxation amendment offered by the gentleman from Newton. His amendment is not in any way disturbed. There simply are added to it the provisions which I have offered.

Mr. Curtis: I admit that the substance of No. 87 as it stands is in the gentleman's amendment, but I nevertheless say that No. 87 as it appears in the Orders of the Day would go out, and the substance would remain in your amendment.

Mr. Wellman: If other language is added to what is now in No. 87 I do not see that in the slightest degree the effect of No. 87 is in any way modified except by what is added. This amendment in no wise changes the provisions in regard to taxation; they remain in full force and effect as offered in the amendment of the gentleman from Newton (Mr. Anderson), and I am in hearty accord with them, if necessary.

I should like, now that I have arisen, to call attention to the fact that in this amendment have been embodied all the changes from the original report of the committee on Education which were adopted by the Convention, and in addition to that there have been inserted, in order to make assurance doubly sure, these words:

No public money shall be appropriated under the above provision to any school or institution not under public control.

It seems, therefore, absolutely impossible for any person to imagine that there is anything left in this amendment which in any way, directly or indirectly, would interfere with the anti-aid amendment.

Mr. WASHBURN of Worcester: In view of the provision in the so-called anti-aid amendment to take from the Legislature the ability ever to make any appropriation for institutions not exclusively under public control, why should these words be left in the amendment proposed by the gentleman, — the words "private societies and"? As the amendment now stands the Legislature is enjoined "to cherish the interests of literature and the sciences and all seminaries of them" and "to encourage private societies and public institutions", — the language being taken from the present Constitution. Now if the anti-aid amendment withholds from the Legislature any power to make any appropriations for private institutions, why leave these words in your amendment?

Mr. WELLMAN: The language which the gentleman quotes, as he is well aware, is the language of the original Constitution, simply repeated in the amendment which I have offered. It is general language which requires the Commonwealth to cherish these several private institutions. As I understand the effect of the anti-aid amendment, it is simply to provide that they shall not be cherished in a particular way, namely, by granting them funds. I did not suppose it was the purpose of the anti-aid amendment to say that the Commonwealth never should cherish private educational institutions in any way whatever.

Mr. WASHBURN: May I add that if these words "cherish private institutions" are left in the amendment proposed by the chairman of the committee on Education, and if the people should adopt the anti-aid amendment, then the Legislature is left in this position: It is enjoined to cherish these private institutions under the amendment proposed by the gentleman from Topsfield, and under the anti-aid amendment it is compelled, when these private institutions may ask for bread, to give them a stone. Does the gentleman from Topsfield see any inconsistency in this attitude?

Mr. WELLMAN: The committee on Education did not deem it within their province to reconcile with the existing Constitution the anti-aid amendment; but to answer the gentleman's question still further, it seems to me there are many ways in which the Legislature and the Commonwealth through the Legislature may cherish educational institutions without granting them money. It does not seem to me that this Convention would desire to go on record as saying that this Commonwealth, in any way, by granting charters or granting privileges to give degrees, never should cherish educational institutions in the future. It seems to me that that position would be so extraordinary that this body never would take it.

Mr. WASHBURN: This naturally leads to a second question which I desire to put to the gentleman. If this amendment proposed by him fails, I understand that the provisions of the Constitution of 1780 will still be left intact. Am I correct in that understanding?

Mr. WELLMAN: It has been so asserted recently upon the floor of this chamber, and I suppose that to be the fact. And I will add that I understand that whether or not this amendment fails the incon-

sistency to which the gentleman refers, if there is such inconsistency, exists. This amendment does nothing to change that inconsistency in any way.

Mr. WASHBURN: That is precisely my understanding of the situation, and I now proceed to ask the gentleman my second question, which is this: What improvement is to be found in the amendment proposed by the gentleman from Topsfield over the section in the original Constitution?

Mr. WELLMAN: That was the matter to which I was about to call attention. At the end of section 2, on page 20, beginning "To this end the Legislature shall, save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution, have power to make such provision by taxation or otherwise as will, in conjunction with the local agencies and institutions above enumerated, insure a complete and efficient system of education", etc. That language is not in the present Constitution and is in the amendment.

Mr. WASHBURN: I am now led to make this further inquiry: In view of the language in the earlier part of the resolution proposed as an amendment, in which the Legislature is enjoined "to encourage private societies", coupled with the language which the gentleman has just quoted, that "the Legislature shall, save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution, have power to make such provision by taxation or otherwise as will, in conjunction with the local agencies and institutions above enumerated, insure a complete and efficient system of education", — if we read only as far as that, might not the careless reader assume that the Legislature might cherish private institutions by appropriations of money raised by taxation, and that the hope aroused at this point would be suddenly dashed to the ground upon approaching the succeeding sentence, which reads: "No public money shall be appropriated under the above provisions to any school or institution not under public control"?

Mr. WELLMAN: The gentleman is no doubt thoroughly familiar with the ordinary rules of construction, that the whole of a document or a paragraph is to be used in construing any part thereof. I do not think that any gentleman who uses the English language as accurately and carefully as the gentleman who asks the question ever would be misled by any such hope even if he read a portion only of the resolution. If he will note the language carefully he will see that it is "in conjunction *with*" these institutions, and the appropriation is not to be made *to* those institutions. The situation in Massachusetts, Mr. President, is this: There are these old private institutions which exist throughout the State, and no proper system of public education can be made without taking them into consideration. It is not that the State desires to appropriate money to them, but the State desires, in making its appropriations to the public school system, to take into consideration the existence of these other institutions; but there is no proposition that any appropriation shall be made for them. It is desired, for instance, that if in a certain town there is a school which takes the place of the high school, but which is supported by private money, not to appropriate money to that school but to appropriate money to the public schools in that town so that, in conjunction with that institution, the town may have a complete and perfect system of education.

There is no desire in that language at any point to appropriate money to private institutions.

Mr. HERBERT A. KENNY of Boston: I want to call the gentleman's attention to the words "To this end the Legislature shall, save as otherwise and elsewhere provided and elsewhere prohibited in the Constitution, have power to make such provision", and so on. Now in view of those words I ask the gentleman if he would consent to an amendment striking out the last three lines of his amendment reading: "No public money shall be appropriated under the above provisions to any school or institution not under public control." Would you accept an amendment striking out those last three lines?

Mr. WELLMAN: I do not know that I fully understood the question, but if I do the proposition is to strike out the words "No public money shall be appropriated under the above provisions to any school or institution not under public control." If that is correct I can only repeat what I already have said, — that that language did not seem to the committee to be necessary, but it was inserted at the suggestion of gentlemen who were interested in the anti-aid amendment in order to make it perfectly clear that no money was intended under this language to be appropriated to any private institution, and that what was desired was that money should be appropriated to the public school system, particularly in those cities and towns where the poverty did not allow an adequate system of education to be granted to the people.

Mr. LOMASNEY of Boston: If we reject this amendment the old Constitution stands, does it not?

Mr. WELLMAN: I understand, Mr. President, that it does.

Mr. LOMASNEY: Yes, sir. As I understand the gentleman, all this change is for the purpose of introducing these words in section 2:

> To this end the Legislature shall have power to make such provision by taxation or otherwise as will, in conjunction with the local agencies and institutions above enumerated, insure a complete and efficient system of education which will afford to every one opportunity for full mental, physical, and moral development, and will aid and encourage all to become unselfish and loyal citizens.

You are using the rest of the measure for the purpose of getting in these words. Is not that so?

Mr. WELLMAN: That is not accurately stated. The other material to which the gentleman refers is the language in the present Constitution, and the matter was repeated so far as it seemed to be essential and the unessential parts were omitted. It is perfectly true that the language to which the gentleman referred commencing "To this end" involves and embodies the important changes which the committee desired to make.

Mr. LOMASNEY: Well, Mr. President, I will make a suggestion. If that be so why does he not leave out all the other words that are not material and come in and meet this question as we have met the other, letting the Constitution stand as it now is? There will be no question about it then. We then can discuss the seven or eight lines as to their meaning and we do not have to refer to the Constitution at all. Why would not that be better, to put the amendment in just as the gentleman from Newton did with his proposition about taxation, in as few words as possible? Then the ordinary man will understand what the real question is. When we bring the Constitution in and change

words without changing the substance we mix up the whole matter, and I suggest to the gentleman to leave the Constitution alone and then we can take up this matter and change it if that be the right thing to do.

As to the second proposition, "No public money shall be appropriated under the above provisions to any school or institution not under public control," — if we pass this amendment as he wants us to now and it goes on the ballot with the anti-aid amendment, — will there not be confusion, will there not be a conflict and will they not be saying all over the Commonwealth: "Vote against the anti-aid amendment (for this, that or the other reason), but vote for the other propositions and you will get the same thing," whereas as a matter of fact you do not? And you thereby put on the ballot something that will assist in killing the anti-aid amendment, which you claim you want adopted.

Mr. WELLMAN: It does not seem to me that there is any danger of confusion, and it does seem to me a very strange thing if this Convention has not the ability to reconcile a matter in regard to education which is comparatively simple with the anti-aid amendment in such a way that both, if the people desire them, can be passed. If this amendment is defeated it simply means that nothing whatever will be done by this Convention for the cause of education. It seems to me that sooner or later the Convention will regret that attitude, and it does not seem to me that it is necessary, in order to pass the anti-aid amendment, to sacrifice the cause of education. And I do not believe that when that matter is thoroughly understood this Convention or the people would desire that result.

Mr. BROWN of Brockton: I would ask the chairman of the committee on Education if he remembers that the answer made to me by the chairman of the Bill of Rights Committee is directly opposite to the assumption now made by the gentleman in the second division and also by the gentleman from Ward 5 (Mr. Lomasney). The chairman of the latter committee (Mr. Edwin U. Curtis) took the position that this section is directly in conflict with the anti-aid amendment and that the anti-aid amendment controls and abrogates it.

Mr. BALCH of Boston: I still am trying to grasp the thought of the gentleman who offered this amendment and I feel that it still eludes me. In order to find out precisely what his thought is I should like to return to the concrete illustration which he himself used. Take the case of the town which has a private academy hitherto used as a part of the public school system, and which also has public schools, — just what is it that the town can do under the language that the gentleman introduced that it could not do without that language? In neither case can it give any money to the academy; in either case it can give all it wants to the public schools. I fail to see what is meant by the phrase that the town can do all it wants to insure a complete system of education if it cannot give the academy any money and can give all it wants to the public schools.

Mr. WELLMAN: It is not giving power to the town; it is giving power to the Commonwealth and to the Legislature to authorize the State educational body, whatever it may be, to deal with the separate towns and cities and aid them wherever it may be needed by public taxation. This is desired by those who have studied the education of the State from the State point of view, where they see in certain parts of the State that the locality is not able to support adequately its

public school, and they desire that the Commonwealth shall have power in necessary cases through its agents and servants, — presently the Board of Education, but if reorganization occurs, some other board would take that place, — to do that work. And this language will do away with certain doubts which now exist as to such power.

Mr. BALCH: That is a new idea to me and I thank the member for his explanation. Am I right, then, in thinking that the primary purpose of this amendment is to enable the State to step in and bolster up the educational system of a weak local educational outfit?

Mr. WELLMAN: The gentleman, I think, has the exact idea.

Mr. PELLETIER of Boston: I should like to ask the gentleman from Topsfield a question. I ask it in all sincerity, and in all ignorance of the answer. Is it not possible for the Legislature at the present time to vote $5,000 for town aid for school purposes?

Mr. WELLMAN: The Legislature has done something along that line, but the power of the Legislature is in dispute; and it has given rise to difficulty which the State authorities in the administration of those funds have met, and it is to resolve those difficulties and make the matter perfectly clear that this amendment is desired.

Mr. PELLETIER: It does seem to me that we are going rather far astray. I think our friend the secretary of the board is responsible for it, because, after all, not one word of the Constitution, so far as the encouragement of learning and the arts and sciences is concerned, — not one word is changed by this amendment nor is one word added. I am going to say something that I hope will not be offensive. I only wish that in those last five or six lines the committee had adopted the plain, simple diction of the words preceding it and taken by them from the Constitution. We then could have understood just what was meant. I understand section 1 of the amendment is just as it was in the Constitution except that other colleges and universities besides Harvard are added and that certain matters pertaining to Harvard are wiped out, including certain rights of the Legislature. I understand that section 2 is the exact wording; every word in favor of education in the Constitution is here verbatim, and as the gentleman from Ward 5 (Mr. Lomasney) has said, really the one thing before us is the five or six lines at the end of section 2. I am nonplussed, as he was, as to why this committee did not bring in a section 3, and, if they want to give the Board of Education greater power or the Legislature greater power, why it is not stated in plain language under a separate section. Why mix up what appears to be a new question with that old definition of love and encouragement of education? Why mix up a money proposition with those lovely words of the old Constitution? It has resulted in perplexity here; we do not know and we do not understand now what those words mean. I can read from those words that the Board of Education may have money appropriated to it under which it might have a hold on the public library of Boston; under which it might gain a hold and grasp upon dairies which are run by different counties, — the publicly run dairy of to-day. I can see the Board of Education getting appropriations for all these things mentioned above, "to encourage arts and sciences", and behold, without naming the body, we suddenly have created a mammoth institution which is like some of the foundations built on money that have been established in New York; we find a power created in this State that we little dreamed of, and that will be given

here and nobody knows it. The Board of Education is not mentioned, but if that is not given the power, some other board will be created by the Legislature and given millions of dollars a year to dispose of like the Carnegie Foundation or the Rockefeller Foundation here and there where the arts and sciences are needed, provided its beneficiaries are already under public control.

Now I do not think anybody here wants to go as far as that. The gentleman from Topsfield has answered me by saying that the Legislature, under the law to-day, can appropriate $5,000 or $10,000 for town aid. He says there has been some difficulty. We do not know what that difficulty was. Let us guess, if that is permissible in such a dignified body. My guess is that the Board of Education has had a row with some town committee. My guess is that the Board of Education wanted to run things and the town committee thought they knew something and opposed the State board running its schools, and wanted to have things their way. The Board of Education, as I understand it, has the right to lay down certain standards for education for a town to follow, but not to manage or run local schools; but who shall say that that is enough to justify this amendment? And, Mr. President, coming down to real bare facts, is not the most criticized form of legislation to-day that which tacks on at the end of it "All acts and parts of acts inconsistent herewith are hereby repealed"? That is a lazy man's form of legislation and never should appear in the organic law. And if we must say "save as elsewhere provided and elsewhere prohibited," we are putting into the organic law something that we always are trying to evade and avoid in statute law. We have been appointed to codify the Constitution and here we are saying to the people: "Don't follow this; be careful; beware; look over the whole Constitution and see if there is not something somewhere that will change your point of view." Have we reached that stage in lawmaking that we must say to the people: "We do not know exactly what is against this or what this is against, but we think there is some 'Nigger in the woodpile'; it is up to you to look out"? That is what we are doing here.

Again, the last three lines which the gentleman on my right (Mr. Kenny) has asked to have struck out; of course they should be struck out. Are we going to enact into the organic law surplusage, insert clauses to please some doubting Thomas, lines that he who runs may read as being simply no addition to the sense, adding nothing to the law? It seems to me that we are not here to adopt an amendment of this kind; that it is not clear; that it simply is befogging the situation as it now rests regarding literature, the arts and sciences. We do not know what it means. The words are capable of a hundred different kinds of construction and it is bad and absolutely forbidden under the best canons and rules regarding the organic law.

Mr. Samuel L. Powers of Newton moved that the resolution be amended by adding at the end of the article of amendment the following:

The Legislature shall have power to pass laws promoting the sound development of the public school system of the State, and to raise money therefor by taxation. No public money, however, shall be appropriated under the above provision to any school or institution not under public control.

Mr. Powers: It seems to me the difficulty with the Convention this morning is that we are in a quarrel as to what language means. We are

discussing what the language meant that was adopted by the Convention of 1780. Now my proposition is to let that old chapter 5 of the Constitution with its beautiful language paying tribute to the great university across the Charles, — let that all stand. It has historic value. But we in these days are dealing with things along practical lines. My proposition is that we give authority to the Legislature to make appropriations for public education with the proviso that all money appropriated for public education shall be under public control. If you choose to add to that the further provision with reference to the taxation, why, I should have no objection to that. But I feel that this amendment which I have offered is an amendment that absolutely clears up the situation. The controversy that has been going on between the committee on Bill of Rights and the committee on Education has got down to the question of quibbling over language, and my purpose in offering this amendment is to make it so absolutely plain that the chairman of the committee on Education and the chairman of the committee on Bill of Rights will agree that there is no ambiguity; that it simply leaves the Legislature to make appropriations of money for public education under public control.

Mr. Herbert A. Kenny of Boston: I think in the first place that the amendment offered by the last speaker (Mr. Powers of Newton) conflicts with the amendment that I offered and therefore I think it ought not to be adopted by this body. The purpose of the last speaker in bringing in his amendment is to nullify all hope of settling this very difficult question. Now we all know, if we are not trying to deceive ourselves, that this Convention will adjourn and we shall sit here another summer. We might as well face that fact. Now this anti-aid amendment, as offered by the gentleman from Boston in the first division (Mr. Edwin U. Curtis), is going to be overwhelmingly defeated at the polls. I represent perhaps the strongest Democratic ward in the city of Boston and they are unanimous that it is the worst bungle ever perpetrated by any legislative or deliberative body. Now the chairman of the committee on Education, it seems to me, has not been treated with respect. Why did the anti-aid people rush in here so quickly? Why did the gentleman from Ward 5 (Mr. Lomasney), with the tremendous acquaintance he has, the tremendous power he has, — why did he bring in the anti-aid amendment the first thing and set the members against each other upon a religious subject? Why did they not let us work? Why was not the committee on Education entitled to have as fair a show as the Bill of Rights Committee? Why did the powerful gentleman from Boston in the first division (Mr. Edwin U. Curtis) and the powerful politician from Ward 5 (Mr. Lomasney) amalgamate their forces and steam-roller this anti-aid amendment through? My distinguished friend from South Boston in the first division (Mr. Creed) has explained to you thoroughly the attitude of the people of South Boston. I explain to you the attitude of the people of Roxbury. The anti-aid amendment is going to be defeated.

Now is it not much better, gentlemen, — is it not much better to let us face this issue, put on the ballot both propositions, because the next vote will put on the measure suggested by the Education Committee? Now we shall save time; we shall save time of this Commonwealth, we shall conduct only one campaign, whereas we shall be obliged to conduct two if we do not put them both on at once. On

the grounds of utility, on the grounds of practicability, the Education Committee should be listened to. The Democratic party of Boston, — not the party of Ward 5, because there is a tremendous foreign element not voting down there [laughter], — the Democratic party of Boston wants to see fair play. It wants to see the Education Committee given a show and not steam-rollered out of this question. What are we thinking of? The gentleman from Ward 5 gets up and says: "Why don't the Education Committee put in simple words and not refer to the Constitution?" Does he not know the Constitution? Do not these gentlemen of the anti-aid who are in charge of this anti-aid amendment know what the Constitution is? Now, gentlemen, let us not have two campaigns in Massachusetts. Let us not keep this religious fight going on for years. When this anti-aid amendment, as I said, is defeated at the polls this fall, this Convention will face an issue of framing a new measure to go before the people, and then the Bill of Rights Committee will crawl on their hands and knees to the committee on Education. Now, why should they not at this time take advantage of the wisdom of the committee on Education? Why could they not allow that amendment offered by the committee on Education? They talk about bigotry! Who is more bigoted than the committee on Bill of Rights? Who tries to throttle debate more than the men on the Bill of Rights Committee? They are organized, thoroughly organized, versed in politics, versed in political machinery; whereas the committee on Education are gentlemen of refinement, students [laughter], not accustomed to practical politics, not accustomed to that kind of ward politics, but living rather in that lofty, inspiring and altruistic air where the sunlight of Heaven touches the top of the mountain. And in that atmosphere, gentlemen, this committee on Education has inspired this amendment, and it is the worst kind of bigotry from my friend the district attorney on my left (Mr. Pelletier), and my companion for life, and the worst kind of bigotry from the gentleman from Ward 5, to steam-roller that committee on Education. Gentlemen, they will take their hats off to the committee on Education when the democracy of Massachusetts kills this anti-aid amendment and leaves education upon our statute-books rather than wipe out education for the satisfaction of some political ambition of which now we do not know.

Mr. HALL of North Adams: I want to call the attention of the Convention to the fact that on June 26 I introduced a resolution, No. 157, which reads as follows:

> The Legislature shall have power to determine the organization of the school system, supported in whole or in part by the State, and to raise, by taxation or otherwise, money for the support of the same.

I had a good reason for this. Having studied the Constitution pretty carefully, I found, as a certain newspaper reporter expressed it, not a ——— thing in it about the *public school system*. I therefore felt that we ought to put something about the public school system into the Constitution. My resolution was modified by the Board of Education, not entirely with my consent, and you have the amendment offered by the gentleman from Newton (Mr. Powers). I am ready to second the motion presented by my friend Mr. Powers, for it covers the point I wanted to make.

Mr. BROWN of Brockton: There is something here that has not been touched upon at all by the committee, and which to me has been

the important point. It is so much of the anti-aid resolution and this resolution as relates to the arts, sciences, commerce and agriculture. In the anti-aid amendment, as we discussed it in the Committee of the Whole, it says, — "or any other institution." Therefore you have before you a proposition that no institution concerned in agriculture, commerce, manufacture, etc., is to receive any public aid except it is under public control. That, I understand, is this anti-aid amendment. The next thing I want to call attention to is that nobody asked for the prohibition to which I refer. There is not a resolution introduced into this body asking for that particular proposition. The nearest to it is the anti-sectarian proposition. Thereupon the Bill of Rights Committee introduced the broad proposition that nobody should receive any aid.

Let me call your attention to another fact. I asked a question of two of the members of the committee on Bill of Rights, who have been so loyal to their measure, and this was the question: Would it make any difference as to whether the amount of money that the Commonwealth of Massachusetts is giving away is seventeen cents or seventeen dollars? One member in this division (Mr. Pelletier) replied: "No;" and he did not care, and he had not thought as to how much it was. The member in the first division (Mr. Swig), said: "No, I don't care; it is a matter of principle." Very well. We will suppose then that they support this matter before the people on the question that it is a matter of principle; and what is the principle that is involved? That no money shall be paid out to any institution unless it is under public control. As I figure it, the Commonwealth of Massachusetts has been so munificent in her donations that lately she has given about seventeen cents on each one thousand dollars of valuation to the end that she might foster and cherish education, benevolence, philanthropy, agriculture, and other undertakings and institutions. I make this figure by a hurried glance at the report which was given to us by the commission to compile data for the Constitutional Convention. In the report of the Tax Commissioner is a list of tax exemptions. The valuation of the Commonwealth of Massachusetts is found in the manual of the General Court of various dates. Therein can be traced the growth of the wealth of Massachusetts as compared with the liberality of its donations for these propositions. In 1871, for instance, the Commonwealth was giving a much larger per cent on each one thousand; there was no complaint then; wealth has increased to the thousands of millions at the present time; and the amount of donations, if you relate it to the total wealth, is trifling.

If it is a matter of principle, and nothing but principle, if, as proposed, nothing is to be given to these institutions in the future directly, by what consistency under that principle do you give it to them indirectly by exemption from taxation? Should they be exempted from taxation up to the starving point? And if they need one dollar to continue their existence will you let them die because you cannot give them that extra dollar? Is that the position in which the Commonwealth should be placed? How long will it take people to discover that in principle there is no difference between donations made directly and those made indirectly? From the standpoint of those who favor the anti-aid amendment the presentation of this principle is a dangerous proposition.

A member said to me: "Mr. Brown, where do you find the Websters in this Convention? Where do you find the Banks and the Wilson of 1850?" I had not time to finish an answer and to draw comparisons; but I might say that so far, as to the domineering spirit that was exhibited in 1820 or 1850, you find it in the Websters that are on the Bill of Rights Committee. [Laughter.] We were not given sufficient time to debate the question. We were told in effect: Now, gentlemen, we have thought this all over, we have got this all agreed upon, the newspapers have handed us down a certificate of character, as having earned our money by this one proposition. Gentlemen, you often have been bothered, you who are running for office, by this question of donations to institutions. If you voted one way while you were in the Legislature, there was one set of people who went out in the dead of night with a red lantern to knife you; and if you voted the other way there was another set of people who went out and knifed you in the day time, and you have had a hard time, sailing stormy political seas. Now all you have got to do is to swallow your pill without looking at it, and hereafter your political future will be free from this strife; take this anti-aid amendment and be happy. [Laughter.]

Now, that is precisely what happened, and everybody swallowed it. All thought they had got rid of their political difficulties if they intended to run for office. No more would this A. P. A. spirit call them to account; no more would the Church spirit feel it had been offended and slashed because it did not get this, that, or the other! That is what you think you have settled. Do not deceive yourselves; it is not settled.

Now, the committee on Education comes forward with its resolution. Well, I do not want to disguise what I think is the effect of it on the anti-aid amendment. I agree with the chairman of the committee on Bill of Rights. If we enact two propositions at one and the self-same time, of course it gives some effect to both. If we defeat this resolution of the committee on Education and enact the anti-aid amendment, it further limits if it does not abrogate the present section 2 of chapter 5, because chapter 5, section 2, was first amended by the amendment known as amendment XVIII. That was a limitation upon that second section of chapter 5. Then comes the present Bill of Rights Committee and makes a further limitation. What is that further limitation? It is not alone educational. Much of your debate, practically nine-tenths of it here, has ranged round the idea of how this will affect education and religion. My objection is outside of that. How will it affect charity, commerce, arts, sciences, manufacture and the trades? I hold we place a complete limitation on these undertakings unless this second amendment now proposed is adopted. But if we adopt this second section of the amendment offered by the committee on Education, if we reënact this section which relates to arts, sciences, trade and manufacture, my opinion is that it qualifies the anti-aid amendment to such an extent that these other institutions, agriculture, etc., may be helped by the Legislature, and that is what I advocate. The educational amendment will carry the anti-aid amendment through; because the people, if they feel the one hand is harsh, will feel the other hand is designed to modify it. Thus the two come up together, and, as has been said by the lawyers here, the courts will construe them together, and that is what I advocate.

What would have happened if at the time you were considering the

resolution from the Bill of Rights Committee you had also before you the resolution of the committee on Education? You might have changed your attitude on the anti-aid amendment. That is shown in the recent vote. There were only twenty-five against the Bill of Rights resolution; there were seventy the other day against the demand of the Bill of Rights Committee, because the committee on Education asked you to change position and seventy men did change. Because of the proverb which says that wise men change their minds sometimes, and this Convention is composed of wise men, I urge the acceptance of the resolution of the committee on Education. I have faith in the gentleman from Fall River. As he presented his views, they are much broader than those of the gentleman from Ward 5, for whom also I entertain a profound respect from my acquaintance and intimate knowledge of him for thirty-three years. The gentleman from Fall River says: It is the position of my Church that we do not care that this money has been given to other institutions. We see only that it is the cause of education or benevolence in its oneness, and we do not analyze beyond it, and we are willing that the Commonwealth shall make such donations. We never have asked, he says, for any aid for our schools; on these grounds he urged you to vote for this amendment. I am sorry that there creeps into my mind a suspicion that the halo that a temporary newspaper paragraph throws over their heads, that they have unified the Convention and the Commonwealth, is too much for them. I believe with the gentleman in the second division (Mr. Herbert A. Kenny) that the people will understand that it is an anti-aid amendment, and that nobody asked for it, that undertakings which have done such great good to the Commonwealth are hereafter to be denied assistance; that the Commonwealth's right arm, in the way of helping benevolence, piety, charity, arts, trades, commerce, etc., is to be stricken from it, and therefore they will reject the anti-aid amendment. What valid objection is there to this resolution of the Education Committee which provides certain powers subject to the anti-sectarian amendment?

We do not know, with conditions changing around us, how long before we may need this provision now endangered. Seed sometimes lies in the ground a long time before it germinates to exemplify the power that governs the seed.

Gentlemen, you cannot believe that the power that surrounded the men who made this Constitution, the power who we hope has selected this State and these United States for the fulfilment of prophecy, — you cannot believe that this section was placed there without purpose. It has not been much used; it has not been abused. Can we not leave it there? I urge that you do that, and I thank you for the attention which you have given me. [Applause.]

Mr. Lomasney of Boston: I want to apologize to the Convention for taking so much of their time; I want to confine myself to facts. To hear the gentlemen talk here you would believe that Massachusetts has been doing nothing for education. Have we not got in front of the State House a statue of Horace Mann? Was he not a Massachusetts man? Have we not been going all over the world showing what we have done for education in Massachusetts? At all the expositions have we not made a pretty good showing when we have submitted exhibits of what Massachusetts has done in the line of

education? Have we been doing all that illegally? Of course not, Mr. President. You will find it right in section 2, chapter 5 of the Constitution, — public schools and grammar schools in the towns are authorized to do all these things; and the Supreme Judicial Court has so ruled, and Attorney-General Knowlton has stated, that those schools and those institutions, and all that, are lawful. Now, that clearly is the history of the past.

We can do all these things now. We have been doing them for years. Why, Mr. President, here is the report of the Auditor of the Commonwealth of Massachusetts for 1916, page 184:

General Education (Aid to Certain Cities and Towns).

School superintendents in small towns,	$81,000 00
High school tuition,	80,000 00
Transportation of high school pupils,	30,000 00
Premium on securities, Massachusetts School Fund,	5,000 00
	$196,000 00

We expended, according to the Auditor's report, $196,000 last year. That money was not applied illegally. The Attorney-General would not have allowed that to be done. That has been done, and they have given money to the cities and towns all over the State where it was needed. And upon whose suggestion do you suppose they did it? Upon the suggestion of the Board of Education. When the committee on Ways and Means are considering the appropriation bill they bring the Board before the committee, just the same as they do the superintendents of the different institutions. They ask: "What are your needs, what can you get along with, where can you do the best work with the money, what towns need it the most?" And the committee take their viewpoint, and put it into the appropriation bill; and they do it in accordance with the Constitution and the laws, and they have been doing it since our government was established.

Now, Mr. President, that is the fact. We finally have driven the committee, — I do not want to say that word offensively, — we have made the committee on Education admit that the meat of their resolution was in those seven or eight lines. Then I made a suggestion that we get down to facts and put that concrete proposition before the body. The gentleman from Newton (Mr. Powers), to whose ability I will testify, is a man capable of drawing a resolution. What has he done? He has given us another anti-aid amendment. He wants to put two anti-aid amendments on the ballot. Do you want two anti-aid amendments on the ballot? I think not. One is enough.

With the two on the ballot the question would be, not as to the principle, but which would do the least and which would do the most and then there would be confusion and conflict of opinion.

In my opinion, it is presumption for any individual to rise here, and, under the sanctity of his oath, say he represents the Catholic people of the State more than any other man, or that any man should stand up here and say that he represents the Democratic Party or the Republican Party of the State more than any other man. No one has a right to take any such position. I do not think any man of intelligence would take such a position, except that in the heat of debate a man sometimes says things that he otherwise would not say.

Now, just a word on the anti-aid matter. I do not like to go into it.

Men say we have had no discussion on it. Why, it has been debated in this State for years; it has been with us underground and above-ground. One party in this State is in such a position that it cannot nominate a man because he is of one religious belief, and the other party in the State is in a position that it cannot nominate a man because he is of another religious belief. All through the State honest and capable men have been defeated for voting as they believed on this proposition, and the Legislature has had this proposition before it many times.

I want to say right here I have found no fault with the nine Catholics who voted against the anti-aid amendment. Why should I? These men had the right to do as God Almighty indicated to them what their duty was, just the same as you, I, or anybody else. Every man has the same rights here. I did not criticize them for it. I mentioned the fact, but I made no criticism of it. No man has a right in this Convention to speak for anybody except the constituency that elected him, and he should hesitate before he undertakes to become a dictator of what a party or a class of people shall do in this community. This matter was before the Legislature, it was discussed there, we had warm contests on it for two or three years, we had the yeas and nays on it several times. I want this Convention to understand that I do not stand here pointing out these things for glorification; I do not do that, but, in justice to myself and the criticisms that have been made, I want to call attention to this fact: On the 22nd day of April, 1914, it was my privilege to stand in this chamber, when the gallery was filled with people of a different faith, very excited and incensed, — it was my privilege then to call attention to and point out the gross discrimination in the distribution of the public funds, and the Legislature on that occasion cast a very small vote in favor of what was then known as the Batcheller amendment, which was a direct drive at the Catholic population of this State, because they provided in it that money should not be appropriated to institutions wholly or in part under sectarian or ecclesiastical control. On that day the Batcheller bill received 87 votes and there were 134 votes cast against it.

Then what happened? Minute men went through the State before the next election and the issue under cover was: "These men voted with the Catholics, they voted against the Batcheller amendment," — and many good men were defeated for no other reason. A great many men who won also felt the whip; they felt the power that was underneath; and we had another vote on the same question in 1915 and it was again rejected. Now, I say without any malice, for I have no malice against any creed, when we voted on it in the Legislature every Catholic in that body, irrespective of what party he represented, irrespective of race, voted against the Batcheller amendment. John A. Curtin of Brookline, Joseph L. Barry of Lynn, Henry Achin, Jr., of Lowell, the French Catholic, and many other Republican and Democratic members from all parts of the State who were not Catholics joined with us to defeat it. There were three amendments before the Legislature in 1915. The Fitzgerald bill prohibited the payment of any public money to institutions not under public control. The Batcheller bill prevented the giving of public money to institutions wholly or in part under sectarian or ecclesiastical control. In those two Legislatures, the largest vote always was cast for the proposition

that public money should be given only to institutions under complete public control. That occurred in 1914 and 1915, and you can consult the House Journals and examine the yea and nay vote to verify my statement. And, sir, it was my privilege during this contest to introduce the distinguished gentleman from Fall River who sat on this floor, a worthy successor of the Honorable John W. Cummings, — I refer, sir, to John F. Doherty of Fall River, — I introduced him to a certain gentleman who asked him to do certain things on that occasion. I introduced the same gentleman to Dr. Good of Cambridge, and he asked the doctor to do certain things on that occasion, and he is the same lawyer with whom I talked concerning the Curtis amendment this year. We went forward and we cast our votes that day for an amendment preventing the giving of any public money to institutions not under public control and there was no feeling then that we were making a mistake; every one then said that the principle of the amendment was right, — no public money for institutions not under public control, — thereby preventing discrimination against any denomination in the giving out of money raised by taxation. Why this change?

Will you gentlemen say, with $16,827,620.24 given to institutions that were just as sectarian in management, in a practical sense, as the Catholic institutions, that it was justice, that it was not discrimination, when that amount of public money was given to Protestant institutions and only forty-nine thousand dollars given to Catholic institutions during a period of fifty-seven years? Will you say that there was not discrimination? I am not charging it in any spirit of bitterness. Do you not think it was discrimination? Of course it was. Why should a Catholic in this Commonwealth be taxed and walk up and put his money into the treasury of the State, to pay for Protestant institutions, any more than the Protestant should go up and pay for Catholic institutions?

Why, Mr. President, you cannot get away from that proposition. I do not know what people may do under certain conditions. But I tell the gentleman who talked about what he could do to me that I will meet him in South Boston, I will meet him in Dorchester, I will meet him in Roxbury or anywhere else that he wants to challenge me to discuss this matter with him; because, Mr. President, I know that I am right [applause], and right over wrong always prevails. You cannot fool the intelligent people of this city and of this State.

This whole proposition from the committee on Education is wrong. I call your attention again to the fact that the gentleman from Newton (Mr. Powers) is on the Board of Education, and that they are trying to get more control over our school-committees. I do not know exactly what school-committees they are after, but I have respect for the school-committee men of Massachusetts. No attempt should be made to interfere with the local committees without giving them a chance to be heard, to meet whatever charges are to be made, especially before you put them under the absolute control of any State board. The district attorney of Suffolk County (Mr. Pelletier) has pointed out to you what may happen if we put it in the power of any five men to do these things. We know what has happened in New York where that has been done. We read of wire-tapping; we hear all kinds of nauseating charges.

Mr. Powers of Newton: I should like to ask the gentleman from Boston what there is in the amendment I offered this morning which

gives any greater control to the Board of Education than it has at the present time?

Mr. LOMASNEY: I say that our State has built up this school system since Horace Mann's day. In my opinion it is the best system of any State in the Union. We do not need his amendment at all. That is what I said the first day; that is what I say now. I do say, the gentleman's proposition, in view of the statement being made that the gentleman from Fall River made a statement, or reiterated a statement, that he afterwards retracted, when put up to him one day by former Attorney-General Parker, that when he made that statement again it seemed to me to be a wise policy for the gentleman from Newton (Mr. Anderson) to offer his proposition, to clear up the situation suggested by Mr. Cummings. If you believe he is right in what he states, — personally, I do not, — it could not be argued throughout the State to affect the anti-aid amendment. But when you do that, Mr. President, it seems to me that you do all that is necessary. We have a good school system so far as our State is concerned; at least, those of us who live here always feel proud in talking about it when we go beyond the confines of our State. I have met many men outside the State and they admit it. Now, then, why strike it down without giving those officials a chance to be heard? Why pass two amendments and put them on the ballot, one doing a thing one way and one doing a thing another way? In other words, going before the people of the State and saying: "If you want to keep money for public schools, vote for this amendment; if you want to give the charitable institutions and the hospitals money, vote for the other amendment." You will have two propositions on the ballot, conflicting, and people may vote for one and vote against the other. Now, the principle, Mr. President, is right here. Who can tell what is going to be the result of the people's action? Who can tell now what the people of this State will do when they vote on this question?

Mr. BROWN of Brockton: What would be the objection to permitting the people to take their choice of those two? Why are not the people to be trusted, from the democratic standpoint? First, they have intelligence; and second, they know the difference between the two propositions; and third, they know which they want, — and the majority prevails.

Mr. LOMASNEY: The people are given their choice now. They have the present system, created under the Constitution. Money can be given to private institutions; they have been doing that for years. Now, then, if they vote for the anti-aid amendment it cannot be done. There are the two alternatives: The present system, under which money can be given; or this amendment, which refuses it. Why do you want to confuse the issue? There is your principle. The State has been doing it for years; has been giving money to institutions that have been getting it. I am not going to say a word against these people; they have done good work, I am not criticizing them at all. Now, this amendment provides that, if it passes, they shall not receive public money unless the institutions are under public control. Are there not two issues? Does not the gentleman admit that?

Mr. BROWN: Does the gentleman ask me?

Mr. LOMASNEY: I do not. I am making my point clear. There is the proposition. The present situation, which permits it; the new law, which prohibits it.

Mr. Brown: Lest by my silence, Mr. President, I agree with the gentleman, — which I wish that I could, — I think that the broader proposition is involved in the last one, because it gives them the right to distinguish, and to give money for agriculture and other undertakings in which this principle is not involved. Your amendment providing for all institutions, — that is what I am getting so heated about.

Mr. Lomasney: If the gentleman will look at the top of page 62 of the manual he will find that all those things are permitted under the present Constitution. We are not repealing that; it stands as it is.

Mr. Brown: Now, that is the meat of the whole proposition. The chairman of your committee says otherwise. The chairman of the committee told me the other day that the anti-aid amendment limits the section to which the gentleman refers, under the words "any other institutions," and we can no longer give aid to these undertakings.

Mr. Lomasney: I know the gentleman is one of the most honest men in the Convention. He must have misunderstood the gentleman. He misunderstood something when he spoke about me, but I would not correct him because I know the gentleman is absolutely on the level and he would not knowingly misconstrue what I said. I know he misunderstood me, but I would not stand up and embarrass him by denying it.

I know, Mr. President, our present Constitution, section 2, chapter 5, mentions agricultural and all those things; we do not repeal them; we simply say that no money shall be given except it is spent under public officers, under exclusive public control. That is the way to do, Mr. President.

I trust and I hope the Convention will pardon me for talking so long. It seems to me that if we want to vote on the proposition fairly and squarely, we shall vote down the amendment of the gentleman from Newton (Mr. Powers), who is trying to get it in here, who tried to get it in before, and I do not know why. There is no demand for it; no school-committee men have filled these corridors asking for it. It is a demand of a body seeking power for themselves, and it is a very dangerous proposition. You see to what extent they go to try to put it in here. They went all over the old article, rewrote it up and down, and finally admit that the last seven or eight lines did the work. Then comes the gentleman from Newton with this concrete proposition, showing that he has been the moving spirit. I do not say it offensively. What is he trying to do? Get the power into a State board. Now, Mr. President, I claim that the Board of Education has all the power necessary. I claim that it can expend the money appropriated now. I claim the Legislature can tell it when and where and how the money shall be expended.

I trust, Mr. President, that we shall adopt the amendment of the gentleman from Newton (Mr. Anderson), and that we shall reject all the other amendments. [Applause.]

Mr. Coombs of Worcester: I resent on behalf of our committee the use of the words that our committee were driven to make any allowance. We were not. Our deliberations were absolutely fair, square, and open. What we did we were not ashamed of; we are not ashamed of it to-day. We were not driven to make any admission. Let me say that the Commissioner of Education made a recommendation in amendment No. 157, referred to this morning. He withdrew that at

our suggestion. He made another recommendation, which reads as follows: "The Legislature shall have power to determine the organization of the public schools." We would not accept the word "determine" because we felt that that matter should be left in the hands of the Legislature. Let me repeat: The committee on Education did their work fairly and squarely. I hope the other committees, — I mention none, — did theirs as fairly and squarely and openly. I resent those words. We were driven to make no admissions. We stand on our record.

Mr. CLAPP of Lexington: One thing is not clear in my mind, and I doubt whether it is clear to this Convention now. I think it rests in the minds of some that the amendment offered by the gentleman from Newton (Mr. Powers) is expected to be adopted in addition to the amendment that was moved by the gentleman from Topsfield. So I want, through you, Mr. President, to ask the gentleman from Newton a question, to see if this thing stands right in my mind. First, is not his amendment an amendment to document No. 362? That document, which has been passed to a second reading, is as follows:

> The Legislature shall continue to have the power to exempt from taxation property used for charitable, benevolent, literary, educational, scientific and religious purposes.

My first question is if his proposal is not simply to add a few lines to that. My second question is this: Is it not the idea of the gentleman from Newton that if his amendment is adopted the entire amendment offered by the gentleman from Topsfield should be swept aside, so that article 5 of the Constitution, the second part of the Constitution, may remain as it is now?

Mr. POWERS of Newton: The gentleman from Lexington is quite right in his interpretation of the purpose of my amendment. The purpose of my amendment was to add to the resolution that already has been adopted a few lines showing the authority the Legislature should have in developing an educational system throughout the State, and, further, providing that all money appropriated for that purpose should be expended under public authority, so as not to come in conflict with what is known as the anti-aid amendment. My purpose was, further, that if the amendment was adopted it should be in the nature of a substitute for the amendment which had been presented by the chairman of the committee on Education. I offer this, not intending to be in any conflict with the chairman of the committee on Education, but in order to clear up what seemed to be a useless discussion over the meaning of the language in chapter 5 of the Constitution. In other words, to allow that language in the Constitution to stand as it is to-day, because it has historical value, and put this language in such form that there should be no question about it. In other words, if my amendment is adopted it will allow the Legislature to exempt from taxation property invested in educational and religious associations, and further will allow the Legislature to appropriate money with a view of promoting education throughout the Commonwealth, that money to be expended, however, under public control. I understand the amendment is entirely satisfactory to the chairman of the committee on Education. I have attempted to find out whether it was entirely satisfactory to the chairman and members of the committee on Bill of Rights. I regret to say, Mr. President, that I am not

quite sure whether it is satisfactory to them or not, but I can see no reason why it should not be satisfactory to every member of this Convention.

Mr. Edwin U. Curtis: The question is: Shall the main question now be put, and I agree that it should be put. Every time anything comes up in this Convention, or has for the last two or three days, that by any possibility could allow the discussion of the anti-aid amendment, passed here the twenty-second day of August, it has been used as a subterfuge to discuss that measure over again. Now, you voted yesterday to put No. 87 on the ballot this year, and we ask you to give it a second reading; and all this discussion that has been brought in here to-day is the same as we shall have to-morrow. When the committee on Rules reports here to-morrow the form for the caption of the anti-aid amendment, I predict some will stand here and fight as to whether that should go on or not, and will fight at every opportunity there is to keep it off the ballot this year. I say you are treating the majority of the Convention who voted to put it on the ballot, who voted on the twenty-second day of August to pass it, — you are treating us like a lot of school-boys, and using the time that ought to be taken to discuss other things.

I hope every amendment will be killed and that we shall pass this resolution to a second reading. [Applause.]

Mr. Wellman of Topsfield: I do not see how any one can justly charge the committee on Education with having proposed anything in conflict with the anti-aid amendment. I rise particularly at this time to say that so far as I understand the force of the amendment offered by the gentleman from Newton it accomplishes essentially what the committee on Education did. I therefore am not opposed to it. But I see no reason why it should be passed.

Mr. Coombs of Worcester: I have said all I had to say, I need not repeat it. There has been criticism; I shall not take advantage of it. I have said all I wish to say, but I have felt that the committee on Education should be set right. Our motives were of the best; we stand by them. We did not mean to controvert the amendment of the committee on Bill of Rights; we do not mean to do it now. I do feel that this amendment proposed by the chairman of our committee should go through. Sentimental? If you want to call it that, well and good. Let that be it. It has been there 137 years; let us not throw it out. The member from Holyoke the other day said we had thrown out education. Are we now going to throw out religion? That is a strong way of putting it. But if you put it that way, or more mildly, I certainly hope that the Convention will put itself on record as supporting this amendment of the chairman of the committee on Education. It is a splendid thing. It has 137 years' record behind it. It will do no harm to the amendment of the committee on Bill of Rights. It may do a great deal of good. It will put us on record. For my part, Mr. President and gentlemen, I want to go on record strongly as favoring this amendment.

The pending amendments were rejected and the resolution was ordered to a third reading.

On the following day, Thursday, October 11, Mr. Morton of Fall River, former Justice of the Supreme Judicial Court, made the following statement, unanimous consent having been given by the Convention.

Mr. MORTON of Fall River: Mr. President, in view of some conversation which I have had with the gentleman from Newton, Professor Anderson, in regard to the amendment offered by him, document 362, I should like to make a statement. I will read the document for your information, Mr. President, and the information of the Convention, as follows:

> The Legislature shall continue to have the power to exempt from taxation property used for charitable, benevolent, literary, educational, scientific and religious purposes.

There are, as I understand, one or two amendments that have been proposed to that. What I wish to say is this: That it seems to me that there are two pretty serious objections to that amendment. The first objection I think is that it is unnecessary; in my judgment, entirely unnecessary.

Reference was made the other day by my colleague from Fall River (Mr. Cummings) to an opinion of the Justices in 195 Mass., which he thought, or appeared to think, would warrant the inference that exemption would not take place, there could not be exemption, unless there could be taxation for the purposes for which the exemption was created. I think that is an entirely mistaken view of that opinion. The opinion was dealing with the question as to whether certain kinds of property could be exempted in view of a general tax of three mills a thousand, or something like that, independently of local and State taxation, and the opinion dealt in the course of it with various kinds of exemption; but there was no intention, and I do not think that any fair construction of the opinion would warrant the inference, that the right to exempt depends at all upon the right to tax for the particular property which is exempted. That is the first ground.

The general ground, I may add, on which I think exemption is exercised by the Legislature, is on the ground that it is deemed wise as a matter of public policy to exempt this or that piece of property. The Legislature may impose taxes for the benefit of religion, and literature, and benevolence, and charity, and in that way, by recognizing the contribution which those things may make to the general welfare, it may exempt them; but not because it may have the right to impose taxes to create a certain charitable or public institution. The right to exempt depends upon the right of the Legislature in the exercise of a wise public policy to exempt this thing or that thing as it deems best to promote the general welfare, subject always to the constitutional provision that taxes shall be proportional and reasonable. That, I think, is a fair statement of the general ground upon which exemptions rest, and I may add in that connection, — I think I am justified in doing it, — that since this matter came up I have corresponded with former Chief Justice Knowlton, who, I may add, also wrote that opinion which was signed by the then Justices of the court, and, as I understand his letter, that is in substance the view that he takes of that opinion; so that I do not stand alone in the construction which I put upon that opinion. That is one ground, Mr. President, why I think this amendment had better not be adopted.

Another ground is that I think, if it is adopted, even with the amendments that are proposed to it, it may tend to confusion in regard to the power of the Legislature to exempt at all. Of course it is a well understood rule, which I think certainly all the lawyers in the

Convention and probably others will understand, that if you name in an instrument certain particular things which may or may not be done, by that very fact you exclude by implication other things which cannot be done. The effect is to exclude them from the operation of the instrument. The instrument, in other words, would be confined to the things which are named in it, and the things which are not named in it would be excluded from its operation.

It seems to me that the effect of naming these things in this proposed amendment, and not naming other things, might be to lead to a construction of the Constitution which would limit the power of the Legislature to exempting these things and taking away from it, or at any rate furnishing an implication to that effect, perhaps the right to exempt other things. Now, there are many other things in the Revised Laws which are exempted besides the list of things given here, charitable, benevolent, literary, educational, scientific and religious. There are other things that are exempted besides those. For instance, take the familiar case of the tools of a mechanic, up to I think $300 or $500, whatever the amount is, household furniture up to the amount of $1,000, a widow or a fatherless child's property up to $500, — the amount is immaterial, — and the case, as I remember it, of soldiers and sailors who have been injured in the service of the United States and have been honorably discharged and have property not exceeding, if I remember right, $5,000, $2,000 is exempt if they suffer from certain physical disabilities. So that I think there might be danger, Mr. President, if this is adopted with its amendments, that an implication might arise that these things which heretofore have been exempted might not be exempted because there was no constitutional provision exempting them.

For those two reasons, which I outline thus briefly, it seems to me, Mr. President, that it would be unwise to adopt this proposed amendment. [Applause.]

The committee on Form and Phraseology reported, Thursday, October 11, that the resolution ought to be adopted, with two slight changes in phraseology.

Mr. Edwin U. Curtis of Boston: In view of the statement this noon of the learned ex-Justice from Fall River I trust that this measure will not pass.

Mr. Anderson of Newton: We have heard this afternoon from the beloved ex-Justice of the Supreme Judicial Court from Fall River (Mr. Morton) a very clear statement in reference to this matter, a statement which I think should allay the doubt in every man's mind as to whether the anti-aid amendment interferes in any way with the exemption of educational, charitable or church property from taxation. The doubt was raised by another learned member from Fall River (Mr. Cummings), and he based it on a certain decision of the Supreme Judicial Court, which he read. As I understood the gentleman from Fall River (Mr. Morton) in this division to-day, the Justice who wrote that opinion has given him the information, as he thinks, that that was not the meaning of that decision. Consequently, as this amendment was put in to allay doubt, and as all doubt in the Convention is allayed, and I believe that the report of this can go forth to the State, it seems to me that, as it is exceedingly difficult to make an amendment which will cover exactly all cases of exemption which are

in the statutes to-day, perhaps it might be just as well to defeat this amendment, on the ground that it is entirely unnecessary under the circumstances.

Mr. BARNES of Weymouth: I coincide with the view offered by the gentleman in the first division and also the gentleman in the third division. I had offered an amendment, which is printed in the calendar, for the very reason that it seemed perfectly clear that the enumeration of classifications stated in the resolution as printed did not include the exemptions that now were permitted by statute and the exemptions that were desirable and even necessary. For example, the casual reader of the classifications specified in the resolution as printed will see clearly that there is nothing there that can permit the exemption of cemeteries and cemetery corporations, and yet I take it that every one would agree that that is a proper and necessary exemption. Neither do I believe that any of those classifications therein enumerated would exempt such property as the old State House in Boston, which I am informed is not owned by the city or the State but is owned by the Bostonian Society. And so I wished to add the words "historic memorials" and the words "cemetery corporations" to the list, because, Mr. President, it seemed clear that the words now in the resolution were not sufficiently broad to include those things. But I never have believed that this amendment was necessary. I never have believed that the power to exempt from taxation resided quite within the narrow limitations and boundaries prescribed for it by the gentleman from Fall River (Mr. Cummings) when he said that the power to exempt could be found only in the power to tax for support. And, Mr. President, it seems clear that, if his contention was correct, then the greater number of the exemptions now provided by law were unconstitutional. But the trouble was that if we passed the resolution as now drawn, enumerating certain classifications for exemption, we thereby excluded by implication all those that were not enumerated, so that unless we were going to make it broad enough to include all that now are exempted by statute it seems clear that we ought not to pass it at all. Therefore, Mr. President, I trust that this resolution will be defeated, and for those reasons, and in the hope that it will be defeated, I am not going to offer the amendment printed under my name in the calendar.

The new draft recommended by the committee on Form and Phraseology was rejected and the resolution reported by the committee on Education was rejected Thursday, October 11, 1917.

On the 21st of June, 1918, Mr. George B. Churchill, for a special committee appointed during the recess (under authority given the President by an order adopted on November 27, 1917), reported the following resolution (No. 385) (Messrs. MORTON of Fall River, LOMASNEY of Boston and EDWIN U. CURTIS of Boston dissenting):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

In providing for education at the public expense it is the duty of the State to secure as nearly as possible the maintenance of uniform standards of instruction throughout the Commonwealth.

The resolution was withdrawn Tuesday, July 23, 1918.

Mr. CHURCHILL of Amherst: I desire to ask for unanimous consent on the part of the Convention to make a request of the Convention regarding item No. 281 in the calendar, document No. 385. If there is no objection, I desire, on behalf of the majority of the committee which reported document No. 385, to ask unanimous consent to withdraw this report.

The PRESIDING OFFICER: Mr. Churchill of Amherst asks for unanimous consent, on behalf of the majority of the committee, to withdraw the report embodied in resolution No. 385. Is there any objection?

Mr. O'CONNELL of Boston: Reserving the right to object, I should like to ask the gentleman if he will make a brief statement as to why that is done.

Mr. CHURCHILL: I prefer not to take the time of the Convention in discussing the reasons that have induced the majority of the committee to withdraw this report. I simply would say that it seemed to a majority of the committee unwise and inexpedient under present conditions to press for the acceptance of this report.

The PRESIDING OFFICER: Is there objection? The Chair hears none and the report is withdrawn.

IV.

THE GOLDEN RULE.

Article XI of the Amendments of the Constitution, substituted for Article III in Part the First of the Constitution, is as follows: —

As the public worship of God and instructions in piety, religion AND MORALITY, promote the happiness and prosperity of a people and the security of a Republican Government; — Therefore, the several religious societies of this Commonwealth, whether corporate or unincorporate, at any meeting legally warned and holden for that purpose, shall ever have the right to elect their pastors or religious teachers, to contract with them for their support, to raise money for erecting and repairing houses for public worship, for the maintenance of religious instruction, and for the payment of necessary expenses: And all persons belonging to any religious society shall be taken and held to be members, until they shall file with the Clerk of such Society, a written notice, declaring the dissolution of their membership, and thenceforth shall not be liable for any grant or contract, which may be thereafter made, or entered into by such society: — And all religious sects and denominations demeaning themselves peaceably and as good citizens of the Commonwealth, shall be equally under the protection of the law; and no subordination of any one sect or denomination to another shall ever be established by law.

Mr. Powers of Newton presented a petition of Frank Ernest Woodward and others for the recognition in the Bill of Rights of the Golden Rule as an indispensable element of the social and civic welfare of the people, and, in document No. 152, proposed an amendment striking out the words "and morality," and inserting in place thereof the words ", morality and the practice of the Golden Rule in all social and civic affairs,".

The committee on Bill of Rights reported that the petitioners be given leave to withdraw.

THE DEBATE.

Mr. ANDERSON of Newton: The committee yield to no one in their appreciation of the worth of the Golden Rule, and of its wisdom. We revere Him who spoke these words and some of us make him the Lord of our lives; but we feel that the addition of these words would add nothing to the Constitution of Massachusetts, for the Golden Rule is, after all, not as many people think, a rule of benevolence, but a rule of justice, — a rule of justice so concretely, simply and picturesquely put that it is the most useful rule of justice in this world. But the Constitution of Massachusetts and the government of Massachusetts are founded on justice, the courts of Massachusetts dispense justice, and if we simply put this additional definition of justice into the Constitution we add nothing to it. A good many members of the committee thought that the area of good advice in the Bill of Rights already was too large, and we did not want to extend it.

The report of the committee was accepted without further debate Friday, July 20, 1917.

V.

DEFENCE OF THE ACCUSED.

Public Defender.

Mr. Donnelly of Lawrence presented the following resolution (No. 209):

Resolved, That it is expedient to amend the Constitution by adopting the subjoined

ARTICLE OF AMENDMENT.

The General Court shall have authority to establish the office of public defender.

The committee on the Judiciary reported that the resolution ought NOT to be adopted.

The resolution was rejected Thursday, July 26, 1917.

THE DEBATE.

Mr. CUSICK of Boston: Representing the committee on the Judiciary in this matter it is my duty to present to this body the reasons why the committee reported "ought NOT to pass." I suppose now that the committee is concerned with document No. 209, but what is said is true of documents No. 210 and No. 211.

The CHAIRMAN: The gentleman is correct.

Mr. CUSICK: The committee found, and one of the reasons why the committee reported as they did to the Convention, was the fact that they were unanimously of the opinion, that this was more of a legislative matter than a constitutional one. In fact, the proponents of all the measures of that nature, which embrace not only No. 209, but Nos. 210 and 211, with the exception of one, admitted that the Legislature at the present time had power to provide for such an officer if conditions required it. That was the compelling reason why the committee reported as they did.

Mr. TWOMEY of Lawrence: In bringing before this Convention a proposition that there be established under our Constitution the office of public defender, I did so with the earnest hope that we might offset, in part at least, the public belief expressed in the oft repeated statement that there is one law for the rich and another for the poor; and I trust that you will not sustain the committee in its recommendation that this resolution ought not to pass, at least until such time as you can satisfy yourselves that, in the administration of criminal law, there prevails at all times that justice which our Constitution seemingly guarantees. To hold that there is one law for the rich and another for the poor does not require us to draw upon our imagination to any great extent, nor are we required to delve into the depths of suspicion. By an examination of the docket of any court in this Commonwealth, whether that court be a police court, a district court, or the Superior Court, you will find a startling variation in the handling of criminal cases. You will find, — and now I am asking you to refer to, and to rely upon, your own knowledge of some criminal cases for a moment, — that in a large number of cases the question is not what crimes have been committed, but rather who the defendant is, where

he comes from, and what he can do for some judicial officer in the future. You will find that, as to those who have standing of some sort in the community, — whether it be social standing or the standing created by wealth or position in the body politic, — very often the disposition of their cases, if there is any disposition at all, is "placed on file," "probation," or "continued for sentence." And I say "if there is any disposition" because many of the cases that I have in mind never get beyond the district attorney's office.

In your Constitution you guarantee to a man the right to trial by jury. You say that he shall not be deprived of personal liberty unless by the judgment of his peers. You also hold that a man is innocent until he is proven guilty. Some little experience in the criminal courts inclines me to believe that when the defendant is in the dock, surrounded by sheriffs, the presumption that is in the minds of the jury is that the defendant is guilty until he is proven innocent. If such a condition of affairs does prevail, if, when a man is brought into the lower courts, he knows that he cannot be defended adequately in the Superior Court before a jury, and he knows that he will be confronted there with the office of the district attorney, of what advantage to him is it to be told: "You shall be presumed innocent until proven guilty; you have a constitutional right to trial by jury"? I venture the statement that the office of district attorney is not what it is supposed to be, and that few of you can recall an occasion when any district attorney ever represented to any jury anything in behalf of the defence. Sometimes they may scratch the surface a little bit; but ask yourself: "Can I recall a district attorney's ever attempting to present all the facts for the consideration of a jury"? So, then, in the case of a man who, either through poverty or through ignorance, goes before a court without counsel, it is almost a certainty that an appeal to the Superior Court is simply a matter of a longer sentence for him, or that after waiting for his trial by jury he will simply be sent back to serve the sentence of the lower court.

I am not asking that the criminal law be changed in substance, nor am I asking that the administration of the criminal law be made more easy for those accused of crime. But I say to you, gentlemen, that, at all events, what the Constitution guarantees should be accomplished, — a trial by jury, a judgment of his peers, before a man is deprived of personal liberty.

But you cannot stop there. You must go further and see to it that no man is deprived of his personal liberty more easily than any of his fellow-beings. This is a more delicate question to handle, whether or not there is any safeguard in our courts to guarantee to every man an equal chance with every other. That to a certain extent may be true in the administration of the office of district attorney; but if you are going to retain the office of district attorney, as I suppose you are, then I say that it is only fitting that you should establish a corresponding, or complementary, office, the office of public defender, so that we shall have a department in the administration of our criminal law which will be just as zealous in the defence of the accused as the district attorney's office to-day is in the prosecution, — that is, in the cases that the district attorney's office sees fit to prosecute.

I take this proposition somewhat seriously, because I submit that it is unfair, that it is shaking the foundations of our courts and of our

government, to have the conviction prevalent that if a man is represented by counsel he can get better consideration from a district attorney's office than he can otherwise. What are we to do? Why say to a man: "You shall not be deprived of your personal liberty without due process of law, without trial by jury, without a judgment of your peers," unless you also take a further step and place him in a position where all these constitutional provisions mean something to him, where they are realities rather than mere vagaries? I submit, gentlemen, that, if these constitutional provisions are to mean anything, you ought to provide by amendment to the present Constitution that there be established the office of public defender, an office which shall impose no obligation upon any person accused of crime, but to which any person accused of crime may resort if he cannot secure counsel otherwise. Then let it be known that our courts are just as zealous for the defence of a poor person, just as zealous to protect him in the pursuit of his personal liberty as they are to take it away.

Something is said about the constitutionality of this resolution, that a Legislature can provide for the establishment of such an office; and your committee has reported that one of the compelling reasons why they have reported adversely upon this matter is the fact that they were of the opinion that the Legislature could provide for a public defender. I am not going to dispute that contention, but I will urge this proposition: That it is only fitting that in the same document, or in the same part of our law, where you provide for trial by jury, where you provide for due process of law, where you provide for a district attorney, you can also, and ought to, provide for the office of public defender. I trust, gentlemen, that the report of the committee that this resolution ought not to pass will not be sustained, but that the Committee of the Whole will report to the Convention that the resolution for the establishment of the office of public defender ought to pass.

Mr. Cusick: The resolution presented by the gentleman in the fourth division (Mr. Donnelly) reads:

ARTICLE OF AMENDMENT.

The General Court shall have authority to establish the office of public defender.

The committee feel that, under the Constitution at the present time, the General Court has that power. In order that the Convention may know upon what we base our conclusions, you can refer to Article XII of the Constitution, on page 109 of the Manual, and read that in connection with Article IV, of the powers of the General Court, on page 126 of the Manual; and I do not believe that any delegate to this Convention will doubt the fact that the Legislature at present has the power to do the very thing which this resolution requires; and I think that this Convention will support the committee on the Judiciary in a matter which would mean nothing more or less than adding something unnecessary to the fundamental law of this Commonwealth. I think that the delegates to this Convention will commend the position of the committee on the Judiciary in that respect. I think that it has been evident throughout our committee hearings that perhaps not enough consideration has been given to the discrimination that should be made between matters of amendment to the

fundamental law and those which are simply matters of legislation. This is one of that type.

It may be considered egotistical in me to undertake to answer what the gentleman said in regard to the courts of this Commonwealth or his construction of the duties of district attorneys. I have practiced law in this Commonwealth for nearly twenty years. I so respect the courts of this Commonwealth that I believe, and my experience has indicated, that nowhere in this country has the litigant been able to have his controversy adjusted and adjudged more quickly, more honestly, more expeditiously, than he has in the courts of this Commonwealth. As respects the district attorney, I believe that any district attorney who is fit to hold that office realizes that he is holding that office as the representative of all the people. His duty is not simply to prosecute. His duty is to present the cases that come before him, either to a grand jury or to the courts, in such a way that justice will be done; and the district attorney who so far forgets himself as to become a partizan in that respect is not fit to hold that office. That district attorneys realize their duties in that respect, I call your attention to a statement made in another matter as indicating the way a district attorney feels in regard to the duties of his office. I read the statement of a district attorney, a member of this Convention, in that respect, made at a prior time, which I think states the real position of a district attorney, and also states in practice how the district attorneys view the cases that come before them that are not represented by counsel.

> I would feel that I was failing in my duty as district attorney if I did not extend every consideration to the accused without counsel, by advising, by sending for friends and witnesses, by conveying his statements to the court, and by treating him with the utmost fairness in the trial of the case. When men are without counsel the district attorney makes no opening to the jury and no argument at the close of the case. The judge is there presiding, to hold even the scales of justice and see that no injustice is done to the prisoner.

That, in my opinion, is the mental state of the district attorney who is big enough to occupy that position. And without going into the merits of the question as to whether there are any conditions which would require a public defender, we can stand on this point, — that if such conditions do exist, or if there is a necessity in this Commonwealth to provide counsel for prisoners who are unable to get counsel, then the Legislature has the power to authorize courts to supply counsel, which they do now in certain classes of cases; or the Legislature may go further, after going into the details which such a question may require, and may establish something in the nature of a public defender, and your committee are leaving that proposition to the Legislature when the time comes.

Mr. Twomey: There seems to be no serious objection to the argument that conditions may prevail that would make it worth while for us in this Commonwealth to have established the office of public defender, nor does there seem to be any serious objection to the contention that under the present Constitution the Legislature can provide for such an office. But if it is worth while, and if, though our forbears have seen fit to have such a constitutional provision, we have been waiting since 1853 for the Legislature to act under that authority, and there has been no action, then I submit that, if there

is a particle of merit to this question, we ought to wait no longer; and if it is a proper matter for the Constitution to contain a general phrase that would permit the establishment of the office of public defender, I say to you that we ought not to delay, but that we ought, without crowding our Constitution with detail, to make that general provision mean something by inserting into it the words "office of public defender."

Mr. CUSICK: I would suggest to the members here that the provision of the Constitution backs up that proposition in regard to legislative powers. I will read, cutting out unimportant portions:

ARTICLE XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, etc.

That gives the individual right to the prisoner to be confronted with proofs, and they have got to be set forth substantially. Then the Article which gives to the General Court the power to make such orders, rules and regulations as are necessary, is Article IV of Chapter 1:

And further, full power and authority are hereby given and granted to the said General Court, from time to time to make, ordain and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, etc.

Then it is the fact that the Legislature already has legislated in that respect. I can refer to chapter 394 of the Acts of 1893, and no question ever has been raised in regard to its constitutionality. The same is true of section 55, chapter 218, of the Revised Laws, and no question ever has been raised in regard to the constitutionality of this act. So I think that the committee may act fearlessly, convinced that the Legislature has full power to do anything that may be necessary if the facts are as the gentleman states.

Law of the Land.

Article XII of Part the First of the Constitution is as follows:

ART. XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land. [A]

And the Legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Mr. William A. Burns of Pittsfield presented a resolution (No. 143) providing for an amendment inserting the following sentence at [A]:

But no method of procedure shall be held not according to the law of the land for the sole reason that such method of procedure was not in force and effect in England or in the Province of Massachusetts Bay prior to the agreement upon, ordaining and establishing of the Constitution of this Commonwealth, nor because it has not been in such force and effect in this Commonwealth to the present date.

The committee on Bill of Rights reported that the resolution ought NOT to be adopted (Messrs. Anderson of Newton, Swig of Taunton, Walcott of Cambridge and Merrill of Gloucester, dissenting).

The resolution was considered by the Committee of the Whole Wednesday, July 25, 1917, and was rejected by the Convention the following day.

THE DEBATE.

Mr. WALCOTT of Cambridge: The question involved here is the same article of the Bill of Rights which the gentleman in the third division (Mr. Cusick) just quoted from, Article XII, and the clause in question I will read:

And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law of the land.

This amendment seeks to add these additional words:

But no method of procedure shall be held not according to the law of the land for the sole reason that such method of procedure was not in force and effect in England or in the Province of Massachusetts Bay prior to the agreement upon, ordaining and establishing of the Constitution of this Commonwealth, nor because it has not been in such force and effect in this Commonwealth to the present date.

This resolution, Mr. Chairman, is introduced by Mr. Burns of Pittsfield, stated by him before the committee to be put in by request of Mr. Rosenthal, a member of the Berkshire bar, who had given the subject some consideration. The necessity, as it seemed to him, of putting in this resolution arises from the fact that the Massachusetts Supreme Court, in 1857, in the case of *Jones* v. *Robbins*, reported in 8 Gray, 329, gave a definition of the law of the land which is much narrower than that which the Supreme Court of the United States gave eight years afterwards and has consistently held to ever since on the phrase "due process of law", which Judge Matthews in *Hurtado* v. *California* (110 U. S. 516) considers the same an equivalent phrase for the phrase "law of the land" as it occurs in the Massachusetts State Constitution.

This case of *Jones* v. *Robbins* came up on a Massachusetts statute which provided that a man could be proceeded against for a felony, convicted and sentenced without an indictment as a preliminary, but merely on an information. The court held two things, the opinion being by Chief Justice Shaw; the first: That the statute authorizing the single magistrate to pass sentence in a criminal case without a jury sufficiently maintained the right of jury trial if that was provided for on an appeal; and the second, — which this resolution meets, — holds that giving the single magistrate power to pass upon an offence without presentment by a grand jury violates the twelfth article of the Bill of Rights, because "the law of the land" was the phrase used in Magna Carta, and —

It must, therefore, have intended the ancient established law and course of legal proceedings, by an adherence to which our ancestors in England before the settlement of this country, and the emigrants themselves and their descendants, had found safety for their personal rights —

quoting Lord Coke, and stating that the indictment was the only method, in his opinion, for the beginning of prosecutions for felony at the time of the settlement of this country and at the date of its independence.

The first part of this decision has been affirmed in fifteen Massachusetts cases; there is no doubt of the law involved. The second part, of which I have just made an abstract, was the source of a dissent by Judge Merrick at the time, and his dissenting opinion was quoted with approval by Judge Matthews in *Hurtado* v. *California* in the United States Supreme Court (110 U. S. 516) and by our Justice Moody in the case of *Twining* v. *State of New Jersey*, subsequently, in the United States Supreme Court (211 U. S. 78).

Notwithstanding that the United States Supreme Court has not adopted the view of the Supreme Judicial Court of our Commonwealth, the only case in which this question, so far as I can find, has come squarely before the court, was *Charles Nolan's case*, reported in 122 Mass. 330, in 1877, and the Massachusetts Supreme Judicial Court, in the only case subsequently on the point, affirmed the majority opinion in the Jones case. So that so far as now appears, this narrower doctrine of what constitutes or can be included in the law of the land is still law in Massachusetts, and there seems to be no reason to suppose that if the case came again before the Supreme Judicial Court of Massachusetts the court would reverse the decision in the Jones case approved in the Nolan case, notwithstanding that the equivalent phrase has been otherwise interpreted by the United States Supreme Court, by several Federal courts and by a number of State courts. It seemed, therefore, to the proponent before our committee that this was an anomaly which should not persist and an anomaly which most probably the Supreme Judicial Court would not feel at liberty to cure itself by reversing an opinion which had been approved since in the Nolan case cited above and which was not attempted to be distinguished in any way; and a minority of the committee on Bill of Rights shared that opinion. That is the reason for the dissenting opinion here. It seemed to me, and I think to the other gentlemen of the minority, that the question has some importance, because it is desirable that the Constitution should allow the Legislature of this State to do what similar Constitutions allow similar legislative bodies to do in other States, and that therefore the subject should be at least carefully discussed, if possible, in general committee and it may be that the gentlemen here will think it well to have this referred to the committee on Judicial Procedure, before whom it seems to me the question might very properly be taken up, — or possibly to the committee on the Judiciary. It seems to me either of those committees, composed more exclusively of lawyers than the committee on Bill of Rights, could perhaps take it up with more care.

I have one or two references which for the benefit of the lawyers here present I should like very briefly to state. The line of the broader opinion started in the United States Supreme Court with the Hurtado case, — *Hurtado* v. *State of California*, 110 U. S. 516. That was a case where the State of California passed a statute allowing a man to be tried for a felony without the preliminary of an indictment of the grand jury but merely on information, and the Supreme Court ruled that that

did not contravene the provisions of the fourteenth amendment requiring due process of law. It stated in the course of the opinion that "due process of law" appeared to them to be the same as "the law of the land"; that this was made up, first, of existing English practices at the time of the settlement of this country; second, of practices existing in the Colonies at the time of the Declaration of Independence and those mentioned in the United States Constitution, and thirdly, of any other systems which might be devised now or might be adopted in the future not inconsistent with the general trend of Anglo-Saxon common law. And it is the last point, the third point, on which they adopted Judge Merrick's dissenting opinion in preference to the opinion of Chief Justice Shaw in the Jones case in Massachusetts.

I hope, therefore, Mr. Chairman, either that the minority report in this matter may prevail or that the whole question may be sent to one of the exclusively legal committees to pass upon, either Judiciary or Judicial Procedure.

Mr. WILLIAM H. SULLIVAN of Boston: I shall strenuously oppose sending this measure to the Judiciary or the committee on Judicial Procedure. I have had some experience with the Judiciary Committee and they are so conservative that anything that has to do with the common person will meet with no sympathy. One dissenter on measures which will appeal to the ordinary individual is all that the Judiciary has done for the people in this Convention.

Now this is not a legal question, this is a simple question and if it was not a simple question the committee on Bill of Rights could understand it. In 1857 one Jones was convicted of stealing $14 in a building and sentenced by the justice of the police court, — 1857, — and since that time no member of the Jones family has remonstrated and no unfortunate who has been committed or has come before a judge in the lower court has sought by his friend or any friend of the common people to change this law. Since 1857 no outcry has been raised against this law. There came before the committee on Bill of Rights a young lawyer, who, like all young lawyers, studies the law more intently than the older and the better paid lawyers, and he thought this was a grievance, as the learned judge who has represented the minority said; why, it was an anomaly, and such a thing cannot be allowed to exist by the young lawyer or by the theoretical lawyer, — not if there is a Convention sitting at the time.

Now the learned judge who has dwelt so eloquently upon the anomaly, — why, he never had heard of this case himself; it was an harassing thought to him that such a thing could exist, and he has read the case carefully since this proposition appeared. Of course what the amendment means really is to give more power to the judge in the lower court; to permit a judge in the police court or district court to sentence a man to State Prison. That is what it means. Of course such a thing appealed to the judges of the lower court in our committee, — three judges of the lower court on our committee. Notwithstanding we have learned judges on our committee this very learned judge wants to send it to the Judiciary, and I have expressed very graciously and impartially my opinion in parliamentary language of the committee on the Judiciary. But notwithstanding we have three learned judges on our committee, he wants to send it to another committee. There are four dissenters to the committee's

report; three are judges, the fourth is a lawyer; and giving the judges of the lower courts more power appeals to him because he is majestic enough in appearance at least to some time hope to be a judge of some court.

Since 1857 there has been no hardship experienced. What does this law say, without any legal verbiage? This court decided that a statute which gives a single magistrate authority to try an offence punishable by imprisonment in the State Prison without presentment by a grand jury violates the twelfth article of the declaration of rights — one judge dissenting. The judge who delivered that opinion was Chief Justice Shaw, admittedly one of the greatest judges we have ever known in Massachusetts. And some of the few things he said I will quote very briefly, because it will appeal to everybody who is not a lawyer and must especially to a lawyer who is not a judge of some court.

Of course it has been conceded by the learned judge who argues for the minority that this law of the land comes from Magna Carta, which was wrested from the King by the barons after a serious struggle and which we inherited with a few other things from the English government. And notwithstanding the very persuasive phraseology of this amendment and its invidious misrepresentation of this phrase "Law of the Land" this something that we inherited was really a right of the common people which our learned judges on the committee would take away, because they think the judge in the lower court ought to have the right to sentence a man to State Prison; it is a kindness to the man who comes before him that he ought not to be required to wait for the grand jury to pass upon his case; he ought to be relieved of the uncertainty and nervous tension certainly by being sentenced by the judge at once. Here is what Chief Justice Shaw says; they would like to change this:

> The right of individual citizens to be secure from an open and public accusation of crime, and from the trouble, expense and anxiety of a public trial, before a probable cause is established by the presentment and indictment of a grand jury, in case of high offences, is justly regarded as one of the securities of the innocent against hasty, malicious and oppressive prosecution, and as one of the ancient immunities and privileges of English liberty. *Jones* v. *Robbins*, 8 Gray, 329, 344.

Is there any man here other than a judge who would care to take that right away from the ordinary man, the man who is apt to be accused of crime? Some of the dissenters say: "Why, I believe I would rather go before a judge in the lower court for sentence." Well, perhaps he has been more complaisant and more of a toady to the judge in the lower court than is usually the case, or perhaps has been better acquainted with the judge in the lower court. But if they will read the case *Commonwealth* v. *Harris*, — and it happened very shortly after this case, — they will find that a man named Harris went before the judge in the lower court whom he knew and he asked to be so sentenced by him. But the judge, whose power to sentence was so limited as to be unable to punish him sufficiently, said: "I am going to hold you for the grand jury." The prisoner said: "I refuse to go before the grand jury and I desire that you sentence me; you have got jurisdiction here." The judge probably did not dare to give him the limit, — it was like the case of one of these automobile owners. The judge said: "I am not going to take the responsibility, I am going to

send you before the grand jury." He said: "I won't go." He was ordered to give bonds to appear before the grand jury and Superior Court where the punishment would be greater. He refused. He went to jail and served out his time for contempt rather than take his chance before the grand jury. Afterwards the grand jury indicted him and he was punished as he deserved.

Now you see if the judges can get this change in the law, if they can take jurisdiction over manslaughter by owners of automobiles, what a fine time some of the owners of automobiles would have. If one of them exercised a wise discretion in running over a man in the proper jurisdiction, why, he will go before his friend who is a judge and that is the last you will hear of his escapade. He will be fined. It is a very fine thing to talk of sending this to a legal committee, but while there were men on the committee on Bill of Rights who were not lawyers there were some pretty good lawyers on that committee. They may not make as big fees as other men in this community, but from my knowledge of them for twenty-five years there are just as able lawyers on that committee as there are in this Convention. A man with twenty-five years' practice knows the good lawyers and knows some law. The other men on that committee who were not lawyers know better the highest law of all, and that is the law of the human heart. They did not have to read this case, but they know just what it means. Only one question was asked the one witness who came before us, and, knowing the law of the human heart which is higher than the law of the land, or the law of man, they are against this proposition and are the majority of that committee. There is nothing intricate, nothing that ought to be changed. It is something that was not heard of till this one legal, enthusiastic and delightful young man appeared and gave a most learned address, but his learned address did not conceal the real object, — to do away with the grand jury. The Constitution says every man has a right to be tried by his peers. This proposition really is taking away the right of trial by jury and it is not necessary to send it to any committee on the Judiciary. Of course I know what they would do with it. There is no necessity to send it before that committee. No man here could be elected if he could not understand this proposition. It is a proposition to give the judge in the lower court a right to send away to State Prison a man who comes before him for an offence, — to extend their jurisdiction by this law. And I say no further appeal is necessary to have this Convention dispose of it properly.

Testimony by the Accused.

Article XII of Part the First of the Constitution is as follows:

ART. XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself [A]. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty, or estate, but by the judgment of his peers, or the law

of the land. And the Legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Mr. Robert Walcott of Cambridge presented a resolution (No. 70) providing for an amendment inserting at [A] the words:

; but his failure to testify may be considered by the court and jury and may be made the subject of comment by counsel.

The committee on Bill of Rights reported that the resolution ought NOT to be adopted (Mr. Walcott, dissenting).

The resolution was considered by the Committee of the Whole Wednesday, July 25, 1917, and was rejected by the Convention the following day.

THE DEBATE.

Mr. WALCOTT of Cambridge: This is a resolution that I feel a great deal more interest in than I did in the last one, since I introduced it myself. This has to do with a rather more serious anomaly, it seems to me, in the administration of the criminal law in this Commonwealth. Here again Massachusetts provides a practice not required of it by the Constitution of the United States. Formerly, of course, it was the custom in ancient British times not to permit a defendant in a criminal case either to testify in his own favor or to be forced to testify against himself. This was the result of a still earlier practice in which under the Star Chamber proceedings a witness was forced under penalty of torture to testify whether he wished to or not. The procedure as brought over to the Colonies here and, as existing at the time the State Constitution was framed, did not permit a defendant in a criminal case to testify even if he wished to, and such was the case in all the other States. As Professor James B. Thayer points out in his "Preliminary Sketch on the Law of Evidence," the change came first as a result not of any popular clamor for the people's rights but rather at the suggestion of an enlightened jurist in the State of Maine, Chief Justice Appleton, who in 1860 put through a statute in that State permitting the defendant in a criminal case to testify in his own behalf. That statute was copied and adopted in this State in 1866. Thereby the anomaly was created that the defendant could testify in his own behalf but he could not be made to testify in behalf of the State against himself, which was neither common sense nor ancient English practice. That it was not common sense is, so far as I know, the opinion of all the men who have thought upon this subject as judges in court, certainly with the dozen or more judges with whom I have spoken in the Supreme Judicial Court, the Superior Court and the municipal courts in this Commonwealth, and of various district attorneys whose letters I presented before the committee on Bill of Rights. It is also the opinion of the text-book writers with absolute unanimity, — Professor Wigmore in particular, Professor Roscoe Pound of the Harvard Law School, Mr. Field, formerly Assistant Attorney-General of this Commonwealth, now instructor in constitutional law at the Boston University Law School, and such eminent practitioners at our bar, amongst others, as Mr. Moorfield Storey, Mr. Robert M. Morse and a score of others. Several judges of our court are on record in lectures which they gave at the Boston University Law School at one time or another as favoring this as a forward step necessary to the prompter administration of the

criminal law. It has been strongly advocated by President Taft. In *Twining* v. *State of New Jersey*, 211 U. S. 78, it is declared that in the 14th amendment binding on the States due process of law does not include exemption of an accused from compulsory self incrimination.

Now what then is the objection to the change proposed? The objections that I have heard are two: First, that it is unnecessary, because a jury of intelligence will now take into consideration the fact that the defendant does not take the stand as leading to the inference that if he were guiltless he would have no objection to doing so. But the answer to that objection, it seems to me, is this: The jury at present do in an underhand way what they ought to be encouraged to do and allowed to do as a matter of right and common sense, and the result of their carrying on the practice contrary to law is that it makes the charge of the judge ridiculous when he has to charge the jury, if so requested by counsel, that *the failure of a defendant to take the stand shall cause no inference unfavorable to the defendant in the minds of the jury*.

The other objection is, as I understand my able neighbor on the floor of this Convention who was the principal opponent of this measure in our committee, that if this rule were adopted more defendants might be convicted. But the rule of law would be unchanged, that a man has to be shown to be guilty beyond a reasonable doubt in order to be convicted, and it does not seem to me that that objection should hold.

There are several advantages in adopting this wise rule. One is pointed out wittily by Mr. Arthur Train, formerly assistant United States District Attorney in New York, in his book "The Criminal" and another book "Crime and the Camorra," namely, that it will tend to mitigate the rigors of the "thirty-third degree" as applied to prisoners. Now we hope that in this neighborhood we may be free from that, but there are always suggestions, — we read in the newspapers that we are not, — and I presume from time to time at places within this Commonwealth the thirty-third degree is given the prisoners. And why is it given by the police? It is given, as Mr. Train says, because it is impossible to question a defendant in open court with all the privileges of being protected by his counsel and the judge; consequently the police feel that in order to get a conviction in cases where they think circumstantial evidence alone may not suffice, they must extract if possible an admission from the defendant to some police officer which they will endeavor to get by the court on the theory that it was not given with the hope of reward or fear of punishment and so will be admissible in open court through the mouth of a police sergeant or detective, in which case it can be introduced. In other words, it seems to me, Mr. Chairman and gentlemen, that this is a measure in favor of suffering humanity and relieving them from the difficulty and troubles of the thirty-third degree, as well as being a measure based upon common sense and the better administration of criminal law in the courts. I hope very much that it will prevail, as it did in Ohio, where this measure was recommended unanimously by the Judiciary Committee to its Constitutional Convention of 1912; this was one of the forty-two measures submitted by the Ohio Convention to the people; it was one of the thirty-four measures adopted by the people of the forty-two that were submitted, and it was the sixth of

those measures in receiving the largest possible popular vote, being carried by 150,000. Accordingly, I submitted it to this Convention, being sure that it was a matter not devoid of merit, and I sincerely hope it will receive careful consideration and not be hurried out of the consideration of this committee by the brilliant and passionate eloquence which I think I may consider myself likely to receive, seeing the signs of action from this very heavily gunned warship on my right hand in this division.

Mr. LOMASNEY of Boston: This is Massachusetts, and we are making laws for Massachusetts, and any one who tries to change the Constitution of Massachusetts should give sound, sensible reasons. What they did in Ohio is not a reason for changing our Constitution. What a few text-book writers say, is no reason for changing our Constitution. What has Massachusetts suffered by this law? What number of individuals in Massachusetts have suffered? That is the question to be presented here. It is a well established principle in this Commonwealth that it is better that ninety-nine guilty men should escape than that one innocent man should suffer. The gentleman who is a judge tells you how easy it is now to convict men. A man is arrested, the police take him in custody, they bar him from his friends and if he makes statements they take them down in shorthand and use them against him.

Mr. Chairman, are we not tired now of paying bills for our prisons? Are they not filled to overflowing? Is not the question now how to keep men out of jail rather than how to put them in jail? Why, Mr. Chairman, they want you to treat prisoners in jail as if they were guests staying in a hotel. They say: "We must treat them as human beings;" and we do treat them pretty well now. But, in my opinion, liberty and property are being held too lightly in this Commonwealth to-day. No man's liberty is as safe as it was years ago, neither is a man's property; and you must have the same respect for one as you do for the other. The fathers of the Commonwealth made the Constitution at a time when liberty meant something, and liberty for all was secured when they made liberty for the individual sacred.

Now, sir, what will this permit? You will have a prisoner at the bar, if this amendment is passed, perhaps as innocent as any one possibly could be, sent away by a sharp and unscrupulous attorney. He no longer is to be tried by the evidence but he is to be tried by the comment of counsel. What has brought about this change? What prisoners have got away because of the laxity of the present law? What cases can you cite where gross injustice has been done to the public by the present law? Why, sir, what does the judge do now? He instructs the jury that the fact that the prisoner has not taken the stand shall not be considered against him. And suppose, as he says, that a juryman does violate the instructions of the court, which is against his oath of office; the minute he starts to communicate that as a reason openly in the jury room before the other men, he is reminded of his Honor's instruction and he must stop giving that as a reason for conviction and let it guide only his own vote. He cannot openly communicate that reason to the other jurymen. I submit, Mr. Chairman, before you strike at this fundamental right you should have overwhelming evidence that public necessity requires it. The views of a few judges should not be considered. Men should realize that this

is a strange world. You, I, every one of us, do not know the day that circumstances may be such that we may have to answer to a criminal charge, and we would want the fairest trial that any human being can have, and what we would want for ourselves we want to guarantee and give to others.

Mr. Chairman, I make no charges against the police, but a police officer is a police officer all the time. I have known a police officer to take the stand and commit perjury and I have seen his brother officer go on the stand and refuse to corroborate him because he knew that he was telling a lie. If the second had corroborated the first where would the poor individual have been? A man arrested for crime in these days, when some police officers stop at nothing to convict, has a hard time to get away if there is any cause at all to suspect him guilty. The district attorney of Suffolk County (Mr. Pelletier) is a member of this committee, and he frankly told the committee that they can convict nearly everybody they want to now. Then why this demand from the judge here for more victims? Why this demand to send more human beings into dungeons? Why, Mr. Chairman, is this demand made when our taxes are increasing yearly by thousands of dollars, when we to-day in Suffolk County are paying money for probation services on a scale that would astonish you, — with men walking around, finding out this and that about other men and holding themselves in office thereby? We should realize also that we have to pay pensions for prison officers to hold men; and now he wants us to fill the jails with more victims. I believe, Mr. Chairman, that no man is guilty until the jury returns a verdict against him. In other words, every man is innocent until he is proven guilty, and we should treat him as such. But to-day many say, — and they unfortunately, to my mind, say it too often, — "Why, if this man had not been guilty the police would not have brought him here." But they forget that the police often bring a man in and then hate to see him get away, no matter how innocent he may be.

I submit, Mr. Chairman, that this is bad legislation. It is not the kind of legislation we expect in these progressive days. It is going backward instead of forward. And any man who will read the Bill of Rights will recognize that the men who drew that document realized the fact that they had to deal with this situation carefully; and they did. The opinion of Roscoe Pound and the other men mentioned here does not justify us in changing a Constitution which has stood the test of time. Ohio can give us no points on sound law. I submit, Mr. Chairman, that we should not allow a man to be sent away by any such practice. If a man is guilty they have opportunity enough to convict him now. Do not change the Constitution for judges and theorists. Do not make it easy to send any more human beings away unless they are convicted by the law as it now stands.

Mr. WALCOTT: I sincerely hope the subject will receive a little more discussion than two statements, one in favor and one against. There are several ex-Attorneys-General in this Convention, an ex-United States District Attorney and a great many judges past and present, and a number of lawyers, and I trust that this question will receive some discussion from the floor. Of course it is not the intention that this resolution shall railroad people to jail; that is only the comment, it seems to me, of an over-excited passion of sympathy. There is a

class of people who sometimes, unfortunately, have to come within the jurisdiction of criminal law. There are cases, — and everybody knows it, — where people have escaped who the general sense of the community believes were guilty, because there was no way to fairly comment on their failure to take the stand. The people in the southeastern part of the Commonwealth well know a murder trial where the defendant was acquitted and nine people out of ten then and now consider her guilty.

Mr. French of Randolph: I rose a moment ago, sir, not to add to the argument upon the merits of this question, but to say that I understood my learned friend, the delegate from Cambridge (Mr. Walcott), to assert at the beginning of his remarks that there is a variance between the Federal law and the law of Massachusetts in this respect. If he made that statement he clearly was wrong, because I have before me both statutes, that of the United States and of Massachusetts, and the substance of each is precisely the same. The statute of the United States referring to the matter embodied in the resolution is as follows:

> In the trial of all indictments, complaints and other proceedings against persons charged with the commission of crime the person so charged shall at his own request but not otherwise be a competent witness, and his failure to make such request shall not create any presumption against him.

And in decisions of the courts of the United States it has been held that that statute means, as the statute of Massachusetts means, that the United States Attorney shall not, in the course of his argument, comment upon the silence of the defendant, either directly or indirectly; and there are numerous decisions by the highest court in the land as well as by the subordinate Federal courts which sustain that proposition as absolutely settled law.

Now, sir, I have had the honor, and the unique and perhaps unenviable experience, of having been a public prosecutor both in the State courts and in the Federal Court. I confess that when I first began the duties of those responsible offices, — or rather when I first began the duties of prosecutor in the State courts, — I was inclined to the opinion expressed by my friend, the delegate from Cambridge (Mr. Walcott). But the more experience I had and the more cases I tried, the more I felt that these provisions were a protection sometimes needed by an individual charged with crime. Of course a protection to a guilty man is not of much consequence, but I am satisfied, sir, that it not only is a protection, though rarely, to the guilty man, but also in many cases is a protection to the innocent man, — the man without the education or the intelligence to withstand the examination of counsel for the government and the man who, though absolutely innocent of the crime for which he is being tried, has unfortunately a record of the crimes of which he may have repented which, if he took the stand, could be made known to the jury and would seriously and improperly prejudice his chances of a fair trial in that particular case. Therefore I hope, sir, that this resolution will not pass.

Mr. Sawyer of Ware: The author of this resolution makes a bid for further discussion upon it, but I do not see why the discussion should continue. The final word has been said by the gentleman in charge of the report on this resolution. I want to say, Mr. Chairman, that if the various groups of people in this State shall find a spokesman to

champion their cause and their right with the same ability, with the same logic and the same understanding of their problems, as that with which the gentleman in charge of the majority report on this resolution has set before you the mind of the poor and of the immigrant and the others who would suffer by this resolution, why, then we need not fear that our debates here are going to compare unfavorably with the debates in 1820 and 1853.

Rules of Evidence.

Mr. George W. Kelley of Rockland presented the following resolution (No. 189):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

In all jury or non-jury trials, civil or equitable, in all courts of this Commonwealth, whether in the nature of contract, tort, or otherwise, — direct or circumstantial evidence which is material to the cause in issue, shall be sufficient for the consideration and verdict or judgment of the jury or court which hears the case; and any existing law or precedent antagonistic to this section is hereby annulled.

The committee on Judicial Procedure reported that the resolution ought NOT to be adopted.

It was considered by the Convention Tuesday, July 23, 1918; and it was rejected the same day.

Mr. KELLEY of Rockland: I desire to state that this resolution, while it bears my name, is no child of mine. Had it been I would have made a different sort of clothing for it, so that one could tell whether it was walking backward or forward. I have no relation to it and am in no way the sponsor for it.

Mr. LUMMUS of Lynn: May I ask the gentleman from Rockland if he does not admit even the putative paternity of it?

Mr. KELLEY: I admit nothing, except that the secretary informed the father that it could be presented only by a delegate of good and regular standing, — and I presented it.

Mr. MCMASTER of Bridgewater: I desire to say that when this resolution came before the committee on Judicial Procedure I inquired of my friend the learned justice who sits on my right (Mr. Kelley) as to its paternity, and he then denied the paternity, whereupon I stated to the committee that the learned justice so denied paternity, and the distinguished chairman of our committee, the gentleman from Wellesley (Mr. Pillsbury) stated that he had known the learned justice for some fifty odd years and he was very glad to learn that this proposal was no child of his.

VI.

CHALLENGE OF JUDGE AND JURORS.

Article XII of Part the First of the Constitution reads as follows: —

ART. XII. No subject shall be held to answer for any crimes or offence, until the same is fully and plainly, substantially and formally, described to him; or be compelled to accuse, or furnish evidence against himself. And every subject shall have a right to produce all proofs that may be favorable to him; to meet the witnesses against him face to face, and to be fully heard in his defence by himself, or his counsel, at his election. And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty or estate; but by [A] the judgment of his peers, or the law of the land.

And the Legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Mr. Louis Swig of Taunton presented a resolution (No. 29) providing for an amendment striking out, at [A], the words "the judgment of his peers, or the law of the land", and inserting in place thereof the words: —

the law of the land or by the judgment of an impartial, disinterested, unbiased, and unprejudiced judge and jury, and to this end the parties for cause shall have the right to challenge the judge and jury or either of them. The Legislature shall establish reasonable rules, regulations, orders, laws and statutes regulating the exercise of this right to challenge.

The committee on Judicial Procedure reported that the resolution ought NOT to be adopted; and it was rejected in the Committee of the Whole Wednesday, July 25, 1917, by a vote of 33 to 130.

THE DEBATE.

Mr. SWIG of Taunton: It is with considerable fear and trepidation that I rise to discuss this measure, in view of the contempt expressed for judges of the district courts by my good friend from Boston (Mr. William H. Sullivan), but possibly he will have some sympathy with me, because I, too, in the measure that I am now going to advocate, have in mind some way of remedying defects so far as they pertain to the judicial administration of affairs in this Commonwealth. And following the example of the chairman of the committee on Bill of Rights I, too, am going to read what I have to say, for fear that it may happen that in this present debate and argument I may say something concerning some of the judges which perhaps would be better left unsaid, because I have a considerable respect for the judiciary of Massachusetts. The measure that I have presented for the consideration of the Convention is numbered 29, but there is also another numbered 28. One pertains to the criminal side of the court, and the other pertains to the civil side of the court. All that I ask in my resolution, if you will read it with me on page two of No. 29, is to add a provision. The article reads:

And no subject shall be arrested, imprisoned, despoiled, or deprived of his property, immunities, or privileges, put out of the protection of the law, exiled, or deprived of his life, liberty or estate; but by the law of the land —

And here is the new part that I propose adding:

or by the judgment of an impartial, disinterested, unbiased, and unprejudiced judge and jury, and to this end the parties for cause shall have the right to challenge the judge and jury or either of them. The Legislature shall establish reasonable rules, regulations, orders, laws and statutes regulating the exercise of this right to challenge.

The whole endeavor of human society from time immemorial has been to secure for the individual an even-handed justice, so that the weak and the strong, the rich and the poor, the high and the low, may stand with equal favor before the blind Goddess of Justice. There was a time when individuals engaged in combat in order to secure justice, and from this crude beginning grew our courts. I dare say in those early days when it was proposed that the system of combat was not in keeping with the times, there were then, as there are now, men who held up their hands in holy horror at the suggestion of a change whereby a more complete justice might be had. What I seek to-day is to place into the fundamental law of our grand old Commonwealth, rich in its traditions of judicial progress, provisions which will insure to its inhabitants, so far as present human failings will allow, the guarantees of justice, so that our judicial system may continue to stand in the forefront and continue to blaze the way toward the goal of even-handed justice. Our forefathers realized, as we realize, that unless there can be an impartial administration of the laws, there can be no security for the people, and that anarchy and chaos follow in the wake of injustice. So, with that in mind, our forefathers, in the preamble of our Constitution, stated that:

It is the duty of the people, therefore, in framing a Constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation, and a faithful execution of them; that every man may find his security in them.

I am asking you to give effect to this sound principle.

There is not a member of this Convention who will not say with me that a person coming into court is entitled to a trial by a fair, impartial and disinterested jury. Then why not put into our Constitution what we say we are entitled to as a matter of right, namely, that there may be a trial by a fair, disinterested and impartial jury? It is as fundamental and essential to have our guarantees of a fair and impartial jury written into our Constitution, the instrument which is the bulwark of our rights, and the ever-living compact between us, as it is to recite any other right that is inherent in the people. Put in the Constitution what most people think is in it. Put in the Constitution what is in the Constitution of most every State in the Union, the right to have a trial before an impartial jury; and if we are to have that right, then we also should write into the Constitution the means of enforcing that right, namely, the challenge. The challenge of jurors is merely a legislative grant in this State, depending entirely on the grace and favor of the Legislature. We should not be beholden to any one for that safeguard of justice.

Mr. Chairman, I feel quite confident that were my resolution to stop right here, there would not be a voice raised in objection, as we now are accustomed to a challenge of juries, and the bugbear of novelty does not exist to scare away the timid. But my resolution goes further; it provides that there may be a challenge of the judge as well as of the juror; and here comes the rub. Let us pause for the moment and consider the resolution calmly and dispassionately. Let

us be fair with one another. Let us get away from hidebound precedents, simply because they are precedents. Let us not be deaf to reason, through affection for an institution or for the individuals making up that institution. Let us realize that none of our human institutions is so perfect but what something can be and should be done to make it better serve mankind. I am no iconoclast. I do not want to tear down. I want to construct. I am no long-haired man with visions, tilting against windmills. I believe I am practical, and I want to discuss this matter, and hope that you will discuss this matter, in a practical way, so that reason, not affection, logic, not prejudice, judgment, not worship, should prevail.

A judge is a man. He is no more perfect than the rest of mankind. He has his fads and his fancies, his theories and his notions, his passions and his prejudices, just as the rest of mankind. A judge is only a human being, trained in the law. It is a mistake to mount a judge on a pedestal, and throw the ermine over his shoulders and then fall down in supplication and worship. And when I say this, I do not for one moment mean to attack our judiciary, because no one here has any higher regard for it than I, although to be sure some of the individuals making it up do not measure up to the high standard that we should like. But on the whole we have reason to be proud of our judges, and we should take advantage of every means that will make the weak among them strong.

We are living in a day of progress. Let us be progressive in our judicial administration. We are not living in the day of the kerosene lamp, for electricity lights the torch of liberty. We are not living in the day of horse locomotion, for automobiles dot the highways. We are not living in a day of the simple life with its simple problems. These are the days of strenuous living and complex problems. These are the days of the telephone and telegraph, and the wireless, carrying their messages of social unrest and stirring mankind to ever increasing demands for justice. Our rules for the administration of justice should keep abreast of the times, and should be equal to the demands of the day. Can you say that a judge whose entire life and association has been in an environment that scorns the man who earns his bread by the sweat of his brow can give fair and impartial and disinterested trial in a matter that involves the intrinsic obligations of capital and labor? Can you say that the habits and thoughts of a lifetime can be cast aside at a moment, and that the biased man can become a paragon of justice? Can you say that a judge on the bench loses all sense of kinship and that he can hear with equal favor a case in which some relative of his is interested? Can you say that a religious bigot, and there are some such on the bench, can so far forget his bigotry as to look with equal favor on all persons who come before him and can dispense justice fairly and impartially? Can you say that a man with a racial or color prejudice loses that prejudice the moment he robes himself in the gown of his office? I can go on and on and point out the various impulses that control judges, as well as laymen, but why take up the time of this Convention, when you are as well acquainted with these conditions as I? And in pointing this out, Mr. Chairman, and gentlemen of the Convention, I am not attacking our judiciary nor our judicial system, but showing only where a link is weak, and how it can be strengthened.

When a person comes into court voluntarily or under a summons or under arrest and is compelled to have his case tried before a judge whom he believes is biased and prejudiced against him, that person, if the result goes against him, rails against the courts, decries society, considers justice has been denied him, and becomes a malcontent. Give that same individual the right of challenge and let the case go against him and he nevertheless will readily acquiesce and lay the result either to the weakness of his cause or to his manner of presenting it. Massachusetts long has recognized this trait of human nature in another way, when it has allowed its people the right of petition to the Legislature and the right to be heard before its legislative committees, and many and many a man who would become a troublesome element in the community were he denied the right to give vent to his feelings and ideas, remains a docile and peaceful citizen, though it means an annual pilgrimage to Beacon Hill to expound his theories whereby the world might be made better. Psychology has a marked influence on the human mind, and the influence on the mind of a litigant who will have the right to challenge should he desire it, will do much to allay the present suspicion of our judiciary, which is reflected by the many resolutions presented to this Convention on judicial tenure.

Judges, like other officials, hold office in the nature of a public trust, and should be accountable to the people. There should be some way by which the people can show to a judge their knowledge of his bias, and by means of the challenge preserve to themselves their right to a fair trial. A judge can go his way now and no matter how autocratic, or bigoted, or prejudiced, or biased, or interested he is, there is no way, upon cause being shown, of removing him from the trial of a cause. Mr. Chairman, I believe that a judge should be independent and that every safeguard should be thrown about him, so that his independence may not be weakened or assailed, so that he can sit on the bench and look every man in the eye without fear or favor, so that he can be his own lord and master, subject to no control but his own conscience and the wisdom with which the Almighty may have endowed him. And were I for one moment to believe that to challenge a judge would impair his independence, then I would not be here to-day advocating this resolution. But the challenge will not impair a judge's independence. On the other hand, it will strengthen it, because the just and independent judge never will be challenged, and his freedom from challenge will be an incentive to continued clear thinking and right doing.

Is it any more essential to have a disinterested jury than a disinterested judge? Let us not deceive ourselves by saying juries decide the facts and judges pass only on the law. In theory this is so in jury trials, but, led on by the subtle charge of the judge, rarely, if ever, does a jury bring in a verdict that is not forecasted by the words of the court. A judge, not only by what he says, but by the manner in which he says it, controls the deliberations of a jury, and any practical lawyer will tell you that the favor of the court is more than half the battle won. It is as essential, yes, more so, that the learned man sitting on the bench, with an eloquent tongue, and with the last word to the jury, should be fair and disinterested, as it is to have the jury panel made up of disinterested men. And to-day, Mr. Chairman,

with the equity courts being widely used, and matters of gravest importance being heard by judges without juries, it has become more necessary than ever to have trials by disinterested judges. Only recently in a decision of our Supreme Judicial Court it called attention to the conduct of a certain judge as "substituting the preference of man for a rule of law." It may be argued that the Superior Court is not a court established by the Constitution and therefore nothing should be said in the Constitution concerning the right of challenge, but to my mind, all the more necessary is it to incorporate in our organic law the provision of the right of challenge, so that no matter what court or courts may be established by the Legislature, there should be the protection of the right of challenge of judges. I am not suggesting a brand new idea. Would that I had the brain to conceive an idea that is so conducive to human justice!

The right to challenge prevails to-day in many States, in one form or another. Some speak of it as a "challenge of the judge," others speak of it as "exception to the judge," while others speak of it as the "disqualifications of a judge;" all, however, no matter what term they apply, provide the opportunity for securing a fair judge by challenge or change of venue. And this right of challenge is not given by sagebrush States but by States that are numbered among the leaders in legal jurisprudence, among them being Alabama, Colorado, Connecticut, Oregon, New York, New Jersey, Iowa, Missouri, Florida, Georgia, Indiana, and many others, even including Porto Rico, the code of which was devised by our foremost legal thinkers. Nor is the practice confined to State courts alone. It is a right in the Federal courts and is provided for in Chapter 231, Section 21, Statutes of 1912. If there are any who feel that the right to challenge a judge is an attack on our judiciary, let them remember that the courts of the United States contain men as honorable, as capable, and as sensitive as our Massachusetts judiciary, and that it was that noble citizen, that peerless judge, that brilliant statesman and that honorable President, William Howard Taft, who by his signature made it the law in the Federal courts. I would ask your permission to read what the provision is in the United States Court.

Section 21 of the Judicial Code of the United States, in force January 21, 1912, reads:

> Whenever a party to any action or proceeding civil or criminal, shall make and file an affidavit that the judge before whom the action or proceeding is to be tried or heard has a personal bias or prejudice either against him or in favor of any opposite party to the suit, such judge shall proceed no further therein, but another judge shall be designated in the manner prescribed in the section last preceding.

And then follows the method whereby that might be done.

It will be argued that the rule that prevails in other States and in the Federal courts is statutory. This is true, because the challenge of judges has come into use only within recent years and since the States adopted their Constitutions, but whatever the reasons controlling in other States, we are here to set forth in our Constitution certain rights inherent to the people, and I say that here and now is the time and the place to give to the people the right to challenge both judge and jurors. It is for the Constitution to give the right and for the Legislature to establish the rules and regulations under which the right may be enforced. And so long as our proposed amendments are

to be submitted to the people, the opportunity exists for ascertaining the public will on a matter that means a striking change in our judicial procedure. Were the Legislature alone to grant such privilege, there would be no way of knowing whether it is the popular will.

I will here beg your indulgence a moment to read a letter that I received from the member of Congress who introduced the Federal legislation:

HOUSE OF REPRESENTATIVES,
WASHINGTON, D. C., July 9, 1917.

Mr. LOUIS SWIG, *Taunton, Mass.*

MY DEAR SIR: — I am in receipt of your letter. I am the author of the provision in the Federal Statute authorizing a challenge of judges in both criminal and civil cause. It was so emasculated before I could secure its passage that I am much dissatisfied with it as it now is. As I originally introduced the amendment it was in substance as follows:

Whenever a party to any action shall file his affidavit stating that he does not believe he can have a fair and impartial trial before the judge (naming him) on account of his bias and prejudice, another judge shall be called to try the cause; but one change of judges shall be taken by each side in the cause, it matters not how many parties there are to the controversy.

I advocated this in the interest of fair trial. The provision was copied as originally introduced from the Indiana statute. As adopted it requires the party filing the affidavit to prove the judge is biased or prejudiced, an almost impossibility. No man in any cause in my opinion should be required to have his cause tried before a judge whom he believes holds bias or prejudice against him or before whom he believes he cannot have a fair or impartial trial.

That was the principle that actuated Congress, and that was the principle that actuated William Howard Taft when he permitted this law to become the law of the Federal courts.

I sincerely hope, Mr. Chairman, that the gentlemen of this Convention will give this matter the attention it deserves and not be prejudiced because the committee has brought in an unfavorable report, because it is a well-known fact, as Judge Kavanaugh of Chicago in a Chautauqua address at Taunton the other evening said, that it is the lawyers and the judges who have stood in the way of every judicial reform that ever has been proposed in this country, and I hope that the lawyers in this Convention will not interpose any objection to this resolution.

In conclusion, I just merely want to quote what Rufus Choate said in the Convention of 1853 in speaking of the judiciary. He said:

> A judge must be a man, not merely upright, not merely honest and well-intentioned, — this, of course, — but a man who will not respect persons and judgment . . . he shall know nothing about the parties, everything about the case. He shall do everything for justice, nothing for himself, nothing for his friend, nothing for his patron, and nothing for his sovereign.

I echo that sentiment, Mr. Chairman, with all the fervor there is in me, and what I propose here to-day is to make sure that the sort of a judge of whom the eloquent Choate spoke is the sort of a judge who will sit on every case.

Mr. WILLIAM H. SULLIVAN of Boston: Mr. Chairman, I rise to a question of personal privilege.

The CHAIRMAN: The gentleman will state his question of personal privilege.

Mr. SULLIVAN: The gentleman who has just taken his seat (Mr. Swig) after a most eloquent speech said that I expressed contempt for the judges of the lower court. If I did it was most unfortunate, but

I am perfectly certain I did not. I have the greatest affection for the judges whom I know in the lower court, and that has been increased rather than diminished by my experience on the committee on Bill of Rights, where three judges of the lower court sat, and I will add that my admiration and confidence and affection for the judges of the lower court has been increased by the able speech of the gentleman who has just taken his seat. My relations with the judges of all the courts for a period of almost twenty-five years have been most pleasant, and only one judge ever has discriminated against me for any reason. Out of probably seventy judges before whom I have come there are only five in whom I have not had absolute confidence, for whom I have not great admiration and large affection. My experience at the bar has been a very pleasant one, and my conduct here is not actuated by any grievance against any judge or lack of confidence in the judiciary. The thought I meant to convey to this Convention was that while I respected the judges of the lower court and the judges of all courts, after years of experience I have much greater confidence in the jury.

Mr. FRENCH of Randolph: It becomes my duty to explain very briefly, on behalf of the committee on Judicial Procedure, the reasons which actuated them in reporting adversely against this proposition. I do not know how generally it is known here that this is, in effect, an appeal from an adverse decision of the Legislature at its last session upon a petition introduced by the gentleman from Taunton (Mr. Swig). The first reason known, and the fundamental reason, which induced the committee on Judicial Procedure to report adversely upon this resolution was that it was not within the domain of the organic law. It is perfectly clear to the committee that if this resolution should be presented anywhere it should be presented to the Legislature, which has full power to deal with it as it sees fit. A distinguished writer upon civic affairs has said that "our whole political system rests on the distinction between constitutional and other law. The former are the sound principles laid down by the people in its ultimate sovereignty; the latter are regulations made by its representatives within the limits of their authority, and the courts can hold unauthorized and void an act which exceeds those limits."

The idea embodied in this resolution, Mr. Chairman, has no prototype in the Constitution of the United States nor of any State in the Union. Some of the States, it is true, as has been suggested by the delegate from Taunton (Mr. Swig), have undertaken, in one form or another, to make secure to the people the right to be tried by an impartial judge as well as by an impartial jury; but so far as the Commonwealth of Massachusetts is concerned I am one of those who believe, and the committee on Judicial Procedure with their wide combined experience believe, that the hope contained in the assertion of the framers of the Constitution, that it is the right of every citizen to be tried by judges as free, independent and impartial as the lot of humanity will permit, here, at least, has been realized. In a long experience at the bar of this Commonwealth I never have known a case to be opened before a judge whom I believed entertained bias or prejudice against either party to the suit. If that evil exists it exists to so limited an extent that I believe it most unwise to attempt to put into the fundamental law that which does not belong there, and which,

if it did, would protect merely against an evil which is of so rare occurrence and already is so wisely guarded against that it would not be proper or fitting to embody it in the Constitution of this Commonwealth.

Mr. SWIG: I should like to ask the gentleman if he did not find it necessary, only very recently, to take advantage of a similar provision in the Federal law.

Mr. FRENCH: I assumed, sir, that that question might be asked me. My answer is "yes" and "no." The provision in the Federal law is quite different from the proposal suggested by the delegate from Taunton. One reason why I now am opposing the resolution of the gentleman from Taunton is that I did take advantage of the Federal statute which was at my hand, in the supposed interest of my client, but I became satisfied that it was absolutely a futile thing. Under circumstances where I believed that the rights of my client were prejudiced I found at my hand not a constitutional provision of the United States but a statute, a weapon that I might use, and which under the stress of the moment and implicitly believing that I was justified in using it I did use. It created an unpleasant situation and did my client no good. But even at that time I said to myself that if I had been a member of the Congress that enacted that law I should have voted against it upon principle.

Mr. SWIG: Mr. Chairman, the only objection that has been voiced by the gentleman from Randolph is that a provision such as I proposed is not germane to the organic law, and that it should lie simply and solely with the Legislature. I wonder whether the gentleman from Randolph has read our own Declaration of Rights, wherein practically the same language is used, only in a different particular. I call his attention to section 29, page 15, as printed in the small booklet which has been handed to every member of this Convention.

> It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the Supreme Judicial Court shall hold their offices as long as they behave themselves well.

Our forefathers evidently thought that that principle should be incorporated in the organic law, in order that the judges of the Supreme Judicial Court might hold their offices during good behavior. Now, therefore, if it was an inherent right to be mentioned in the organic law in order that the judges might hold their job during good behavior, why is it not inherent for the organic law to give the right to the people for all times to have a fair and impartial trial?

VII.

VERDICTS OF JURIES.

Mr. Charles R. Johnson of Worcester presented the following resolution (No. 49):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment:

ARTICLE OF AMENDMENT.

[A] In all trials by jury in civil causes the agreement of [B] a less [C] number than the whole number of the jurors shall be sufficient to authorize a verdict.

The committee on the Judiciary reported that the resolution ought not to be adopted.

The Convention, sitting as a Committee of the Whole, took up the consideration of the subject Thursday, July 26, 1917.

Mr. Charles F. Dutch of Winchester moved that the resolution be amended as follows:

By inserting, at [A], the words "The General Court may provide that"; by striking out the article "a", at [B]; and by striking out the word "number", at [C].

These amendments were rejected and the resolution was rejected by the Convention Friday, July 27, 1917.

THE DEBATE.

Mr. JOHNSON of Worcester: This matter is one of three as to juries. No. 49, one which I presented, which, as you will see by your docket, simply is a permissive measure authorizing the Legislature if, in its wisdom, it sees fit to provide for non-unanimous verdicts, to fix any number less than twelve. It might be eleven or ten or nine. I do not suppose any one ever would expect less than nine. The two others provide, one of them for five-sixths and the other for three-quarters. I have nothing to do with those. I am not opposed to them but I simply speak for the measure which I have introduced.

In the year 1898, being a member of the House, I introduced a similar measure as a legislative provision. It was said then by some good lawyers that they thought that would require constitutional amendment and that it could not be done by the Legislature without constitutional provision. But it takes a good deal to get an amendment to the Constitution through by the large vote of both Houses and taking it two years, so I dropped the matter and have waited until this time, and, being a member of the Convention, which if it saw fit could introduce a matter which could be voted upon early, I thought it well to introduce that measure again.

It simply is permissive, authorizing the Legislature to provide for something less than a unanimous verdict of a jury. There has been a good deal of unrest of late years in reference to the matter of juries. Cases have been hung up. Cases have been tried at great expense, a long time spent, and the jury disagreed. Perhaps one or two persons would "hang," as the saying is, in the jury.

It is said, to be sure, that all verdicts are to a degree compromise verdicts, but there would be less of them if there were provisions

for nine, ten or eleven jurors agreeing. I believe it is not uncommon for the juries, when they are out and find that they do not agree, and there is quite a large majority one way and they cannot change the others, to sit down and play cards until they tire them out; if they cannot tire them out then they eventually decide to disagree. Now, that has been done in a great many cases. I can refer to one specific instance which came to my knowledge, — a great case. That was the case of *Tilton* versus *Beecher*, back in the middle seventies. The trial began about Christmas in 1874 and ended in the latter part of June 1875. The ablest lawyers in New York and of the country were enlisted, — Mr. Evarts, Mr. Shearman, Judge Fullerton and six or eight other very able men. More than six months were exhausted in that trial, and I do not know how much money was spent, only to result in a disagreement of nine to three. That is only one. That is a great case. But here in our Commonwealth you see enough of it. There are men who always are trying to get a disagreement, who try a case simply for a disagreement. If they get only one man that is enough. If such a provision as this were passed it would remedy one of the great defects, I think, of the law.

Some other States have tried this. They are mostly western States, the Dakotas, Nevada, Colorado, I think, and several other western States, and two southern States. Utah is one of the western States, and I remember North Carolina, and I think Mississippi, of the southern States. I think about ten or twelve have this provision. So far as I know there has been no changing back to the old system. I had a list which I furnished the committee on the Judiciary, furnished me by the commission for getting information for the Convention, on this subject. I have not got it back yet, and I can tell you simply the result, — that there are about ten or twelve States in the western part of the country, and a few southern States, that have adopted it; and so far as appeared by the record and the information collected by the commission, they never have changed back again.

Some have thought that this might be prejudicial to the interests of landed or corporate bodies. I do not think it would be. I think that now, where they have a good case and can get it through, they would do much better if they had this provision than to have the tort cases and other cases of like character hung up, and then have to be settled by paying something out of their treasury. I think that a poor man would be benefited also. If there should happen to be on a jury a representative or two of other interests, why, if the great majority of the jury saw fit to vote for him, after hours of discussion, he would get the benefit.

I see nothing in this matter but what is right and what is in favor absolutely of progress and of the despatch of business, — not of holding up matters and causing them to be tried over and over again. I think it is in the interest of good government and of the despatch of business. If you turn this matter around, if we had no provision for a unanimous verdict now and it was brought into this Convention, how many do you suppose would vote for that? I think very few indeed. Therefore I submit to you, with confidence in the stand I have taken, with confidence in the merits of the case, that this measure should be advanced to another hearing, put on the docket, and that it should be given its chance before the people. I thank you for listening.

Mr. BURNS of Pittsfield: The gentleman from Worcester who has just taken his seat is entirely correct when he says that this is a constitutional matter. Let me read you a quotation from Thompson and Merriam on Juries, which has been quoted with approval by the highest tribunals of several of our States:

When a Constitution preserves the right of trial by jury inviolate, the Legislature cannot change the number of jurors either in civil or criminal causes.

The gentleman has stated that all he proposes to do or contemplates by this resolution is to give the Legislature authority to provide that the number of jurors who may bring in a verdict may be less than twelve. I think, sir, that what I have just read to you is an answer to that proposition. Permit me also to read Article XV of the Declaration of Rights:

In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the Legislature shall hereafter find it necessary to alter it.

You will see, Mr. Chairman, that our forefathers provided that in just two cases the Legislature was given authority to alter it. Therefore, as I said at the outset, the gentleman is right when he says that this is a constitutional question. From the eleventh century the terms "jury" and "trial by jury" have meant twelve disinterested, unbiased, impartial and honest men. Let me also read to you the definition of a jury given by the Supreme Court of one of our States:

The term "jury" as used in the Constitution means twelve competent men, disinterested and impartial, not of kin nor personal dependents of either of the parties, having their homes within the jurisdictional limits of the court, drawn and elected by officers free from all bias in favor of or against either party, duly empaneled and sworn to render a true verdict according to the law and the evidence.

What we would have, Mr. Chairman, if this resolution were adopted and approved by the people, would be a continuous running to each session of the Legislature by parties interested in having the number of jurors who might bring in a verdict any number below the number of twelve; and courts, lawyers and litigants would be unable to tell from one day to the next, if their cases were on the docket, whether they were to have a trial by a jury of twelve men, all of whom were to bring in a verdict, or a jury of twelve men, ten of whom, nine of whom, eight of whom, as the case might be, might bring in a verdict.

Your committee on the Judiciary, while it approached with some diffidence the subject found in the several measures following this resolution, and some of the members of our committee reserved their rights on those propositions, was unanimously of the opinion that this resolution ought not to pass. In short, that it is so phrased that it would be, to use a legal expression, or it ought to be, void for uncertainty; and that if anything of that kind was going to become a part of our constitutional law it ought to be definitely stated whether the number of jurors less than twelve who could bring in a verdict should be five-sixths, two-thirds, or three-fourths, as the case might be and as the people might approve.

Therefore, Mr. Chairman, we are of the opinion that this is not a proper resolution to be adopted by this Convention, that it never would be approved by the people, and that it does not preserve the

rights of trial by jury inviolate, and that it would permit the Legislature to change the number of jurors, which is contrary to law and contrary to all precedent.

Mr. JOHNSON: There are a number of truisms stated by the gentleman from Pittsfield (Mr. Burns) as to what constitutes a jury, and that jurors and jury are recognized by the Constitution. That of course is true or we should not be here on this question. I have no pride of opinion. I am entirely willing that the other measures, or any change provided in the other two, shall be adopted rather than mine. But I thought in presenting it, in drawing it, that this was so simple that it would leave to the Legislature the right. We are not a legislative body; we are a constitutional body, and I thought myself that a Constitutional Convention was not the Convention, or not the authority, to provide the number. It seemed to me that the General Court in its wisdom was that body.

Now, I desire to make one other suggestion, and that has been made before and by higher authorities, — that this is the last human institution where unanimity is provided for anywhere. You have your selectmen deciding by a majority, you have your Legislature deciding by a majority, you have Congress deciding by a majority; and any decision, any veto, either of a Governor or of the President, may be overridden by a two-thirds vote. So that the jury is the very last institution where unanimity is required.

There is a great deal that might be said of the history of juries and how this matter came about; how, tracing it down to the trial by blood, and the trial by fire, and the other ways in which they used it, they came finally to the system of juries. In some countries they have the arrangement that it shall not be a unanimous jury. That it is the last, — in civilization, the last, — institution where unanimity is required. Great matters have been decided by majority vote only. The battle of Marathon was decided by a majority of one, — that early council of generals, in one of the greatest instances. Simply by a majority of one did they decide that that battle should be fought, and its result was most precious to the human race. I think we can leave this matter safely to the Great and General Court to provide in its wisdom some number, — to agree upon some number less than the total number.

Mr. PELLETIER of Boston: I rise not in the hope that I can illuminate this subject at all, rather out of a matter of personal pride, in that I should like to be recorded as favoring the proposed amendment. I think it is one of the most important measures that has come before this body. I think it stands the test that has been mentioned here in argument so often: Is there any public demand for such a change? I say there is. I say that any man who has been about the courts for a few years will know that there is nothing which brings more disgust to the human heart and soul, or to litigants, than the news that one man has held up a verdict. It does not correspond to our sense of justice or of fairness that one man should be able to hold up eleven and to put the litigant to further and greater expense. This is no new idea. It has been well tried and long tried in various States of this country, and the record is a good one. Wherever there has been this provision there has been no attempt to change it back to the old system we have here of a unanimous vote. I understand that this is

simply permissive, that it does not say what the vote shall be, but it leaves it in a way that the Legislature may say whether it shall be unanimous, a majority, or some certain portion. It leaves the question open; and I predict that if the question is left open that the committee of the Legislature which has a bill relating to this next year will have one of the most largely attended meetings of that session. The people are interested.

It is a strange thing that the one man hold-up happens in a majority of the total cases, in my opinion, in personal injury cases. That ought not to be so, because when a man is injured his whole family knows it, his earning capacity is perhaps impaired. He goes back home and says: "Eleven men felt that I should have got a verdict but one man said No."

I believe it will tend to uphold respect for our courts, to hold the courts in our judicial system in greater respect, and I do hope that it will pass. I know that the gentleman who spoke first (Mr. Johnson) says that if there is any little defect in phraseology he gladly will agree to an amendment, so that no doubt should be left in the mind on that score.

Mr. CREED of Boston: Through the Chair I should like to ask the gentleman who has just spoken a question. Would he favor the Legislature reducing juries in criminal trials from a unanimous vote to a less number?

Mr. PELLETIER: I would not, Mr. Chairman, I would not; but I understand this applies only to civil matters, it does not touch the criminal side.

Mr. SANFORD BATES of Boston: I had not intended to speak on this particular amendment because the amendment which immediately follows, No. 203, is the only amendment which I have introduced into this Convention and I particularly anticipated making a speech on that amendment. The discussion, however, has taken a general turn, and inasmuch as these are all kindred matters I rise to give what arguments I have in favor of No. 203 at this time. If it should be deemed wise in the mind of this committee to recommend this amendment suggested by the gentleman from Worcester (Mr. Johnson) I would have no particular objection to that. I think it must be apparent, however, as is put forward by the gentleman from Pittsfield (Mr. Burns), that it would be better in the interest of stability to have written into the Constitution what proportion of the jury should agree. Therefore my amendment has followed almost identically the amendment adopted in the Minnesota Constitution and says that five-sixths of a jury in civil cases may agree on a verdict.

Now certain things in this discussion, Mr. Chairman, have been assumed. The first assumption is that this is a constitutional matter, and we do not need to speculate on that. The second proposition that I want to bring to your attention to-day is that this does not violate the provisions of the United States Constitution. That has been decided in *Maxwell* v. *Dow*, 176 U. S. 594, so that any questions which might have been raised by the learned gentleman from Pittsfield that this is a matter which has come down to us from Magna Carta and that the unanimity of the jury system is something holy and traditional and one of our constitutional rights have no effect whatever. We start to-day to discuss this matter as a new proposition. If we were

laying down a provision to-day, would we insist that twelve men, a butcher, a baker, a lawyer, and a clergyman and whatnot, should not render a verdict, — and the word "verdict" means a true saying, — should not render a true saying unless every man on that panel absolutely agreed? Why, Mr. Chairman, the proposition is almost ridiculous on the face of it. While we have pulled along and obtained unanimous verdicts we have obtained them oftentimes, I fear, at the sacrifice of the opinion of some member on the panel.

Now somebody may say that I have not had any experience with juries, and there may be something in that. I have spent about the last six years attending to legislative duties and if I had tried as many cases as some of my colleagues have I could not have served the State with fidelity. But I am discussing this proposition, Mr. Chairman, from the academic and historic point of view. I had the honor to be appointed on a committee of the Massachusetts Bar Association by Judge Sheldon with Mr. Thomas W. Proctor and Mr. John E. Hannigan of Boston to look into this proposition. We tried to sound the members of the bar of Massachusetts to see what ideas they had about it. But after all, Mr. Chairman, the lawyers have very small concern in this proposition; this is a matter which concerns the litigant primarily. This is a matter which concerns the man who takes all his property and all his fortune and lays it for determination before a jury of his peers. And I say to you, following out the statement made by the gentleman from Worcester (Mr. Johnson), that it is unfortunate in the extreme that that individual should be obliged to secure an unanimity of opinion of those men when it is not required in any other walk of life. Why, we have elected a President of these United States, if I am not mistaken, by one vote in the electoral college. Frequently we hear of decisions, — one was quoted here only yesterday, of our own Supreme Judicial Court, which was a four to three decision. If we required that every decision of our Supreme Judicial Court should be unanimous we either would have to stultify our judges or else get no decision at all. And we have in our Supreme Court of the United States instances where on the same matter the first time it was submitted the decision was eight to one one way and later on when the same matter was again submitted the decision was eight to one the other way, and the one man who reserved his rights to write a dissenting opinion the first time changed his mind and wrote a dissenting opinion when the court decided his way.

So we have this in committees of arbitration; so we have it in school-committees and so we have it in the Legislature. With some of the other members of this Convention I was present at the session of 1914 in the Legislature and saw matters decided differently from day to day because of the temporary absence of one member. A vote which was taken one day would be rescinded or reconsidered the next day. The provision for unanimity is traditional and nothing else, and I think to-day, Mr. Chairman, we ought to examine this question in the light of common sense, in the light of efficiency, if you please, in the light of the rights of the ordinary litigant to secure substantial justice and substantial justice speedily.

The opponents of this proposition will say that the facts and figures of the courts do not bear out the suggestion that there is any demand for the change in the law. They will stand on the fact that there is a

very small proportion of disagreements recorded. Well, Mr. Chairman, there are disagreements recorded, and when those disagreements are recorded somebody suffers; somebody is obliged to hire a lawyer again, somebody is obliged to pile up the expense and the county is put to additional expense by reason of that disagreement. But that is not the only situation that might arise. A great many juries are practically forced into a verdict which they do not believe in. You may say that is a fair way of arriving at a compromise. That may be so, Mr. Chairman, but it is not the true reflection of the opinion of the men who sit on that jury. Under our present system it is possible that one man by reason of corrupt influences, — which is somewhat rare, — by reason of his friendship and interest in one or the other of the parties, or by reason of a certain turn of mind which he has which is absolutely contrary to the established facts, may hold up the entire eleven. And I submit that is a proposition absolutely foreign to democracy. That is a thing which we as common-sense men to-day, considering for the first time, ought not to tolerate.

Now it is not to be applied in criminal cases. All the traditional arguments that are brought apply almost entirely to the criminal case. We throw certain safeguards around the criminal, one of which we retained here yesterday, to the effect that he might stand mute when accused. Other safeguards are thrown around him and one of them is that the State shall convince twelve men unanimously that he is guilty of a crime before he is punished. That is a proper and a necessary and a wise safeguard, but that safeguard does not exist in a civil case where one's rights are balanced against another, where the scales of justice should be held between one man and another and the question of the man's punishment by the State is not at stake. Therefore we approach this matter not in the light of tradition, not in the light of sentiment, but in the light of common sense.

Now what have other countries and what have other States in this country done in this proposition? You will be surprised, Mr. Chairman, when I tell you that of the civilized countries of this world the United States and England are the only two in which the unanimous verdict of a jury is required; that even in the United States there are upwards of fourteen States where by constitutional and statutory provisions unanimity in jury trials is not required. In France the jury system was introduced in 1771 and requires the two-thirds vote for a verdict. In Italy and Germany a majority is sufficient. In Austria eight of the twelve agree. An interesting provision applies in British India, where, after deliberation, if six of the jury are united and the judge agrees with them they render a verdict. The States in this country where less than an unanimous opinion is required are as follows: Arizona, California, Colorado, Idaho, Kentucky, Louisiana, Montana, Minnesota, Missouri, Nevada, South Dakota, Utah, Washington and Wyoming.

This matter, in addition to having been enacted into statute in a number of cases, has been considered recently by the bar committees of various States and by investigating commissions in various States. I hold in my hand the report of the Bar Association of San Francisco made in 1910, and in their second recommendation they recommend reducing the number of jurors from twelve to seven, six to be competent to render a verdict:

Such a reduction in the number of jurors by an amendment of our State Constitution (the report continues) would not violate any provision of the United States Constitution.

It seems that the sacred number of twelve has for its main foundation the fact that the number of the apostles and the original number of the Jewish tribes was twelve.

The advantage of reducing the number of jurors in a saving of time and expense is too obvious to need any elaboration. A reduction in the number of jurors and a verdict of less than all was advocated by Mr. Van Dyke, afterwards a justice of our Supreme Court, in the Constitutional Convention of 1879.

That is the recommendation of the lawyers themselves in California.

In Colorado the agitation was maintained for some time for a majority verdict by the well-known judge of the juvenile court of Denver, Judge Lindsey. After the court there had passed on it they decided that the statute was unconstitutional and made an amendment to the Constitution necessary.

I am sorry that I have not to lay before you, Mr. Chairman, certain letters I received from the States in which this matter is being agitated. I hope that the clerk of the committee on the Judiciary to whom I handed these papers will read them to you before this debate is closed. I do not accuse the committee of secreting my evidence or anything of that kind, but I understand that several of the members of that committee are favorable to this five-sixths proposition and in support of it I hope they will read to you the statement from the judge of the Court of Common Pleas in Ohio, who outlines the workings of the five-sixths majority provision which obtains in Ohio, which was put into effect in the Constitutional Convention recently held in that State. I also submitted to the committee, Mr. Chairman, statements from a man in New York who stated that all of the three bar associations in New York favored majority verdicts in civil cases for the purpose of preventing corruption and retrials and undue influence on juries.

Now, Mr. Chairman, looking at the matter from the standpoint of contemporary history we are forced to the conclusion that a great many enlightened and up-to-date communities have seen the absurdity of retaining this relic of tradition in the jury system. Looking at it from the academic point of view, Mr. Chairman, we see that there is not another walk of life where unanimity of opinion can be obtained and is required to be obtained. And I am going to simply ask this Committee of the Whole, assuring them that I have no particular interest in this proposition beyond the fact that I have studied on it for four or five years in the Legislature, to simply use their own common sense in this proposition, and ask themselves whether, treating this matter as a new matter, it is not wiser and better all round to provide for a common-sense provision.

Mr. STONEMAN of Boston: I am one of the members of the committee on the Judiciary who has reserved his rights to dissent from the majority report on one of these resolutions. I am not in favor of document No. 49, for the reason that the delegate from Pittsfield (Mr. Burns) has so well stated this morning. That document is extremely vague and does not furnish sufficient basis for a change of our jury system. I do favor No. 203, upon which the gentleman from Boston in the first division (Mr. Sanford Bates) just now spoke.

The origin of our jury system, which required unanimity of jury

verdicts, came in the early days of English history, when the English wrested from the barons and from the Crown the right of trial by jury and the right to "due process of law." Those conditions no longer apply, in modern history and in our present day. We no longer have an arbitrary power that governs us, as they did in those days in England. To-day we have a government "of the people, for the people and by the people," and that additional safeguard of unanimity of jury verdicts which was deemed necessary and essential in those days, is no longer necessary to-day.

I do not speak of criminal cases, but I do speak of civil cases. I have tried cases in the courts of this Commonwealth for nineteen years, and, as the learned district attorney from Suffolk County (Mr. Pelletier) has so well said this morning, nothing is so great a disappointment, nothing embitters a litigant and the parties and counsel in courts so much as the going through with an important trial involving civil questions, and to find at the end of a long, tedious and expensive litigation that one man out of the twelve has hung up the jury. And generally when a jury is so hung up by one man there is a reason for it, and that reason generally is either ignorance or corruption, and in most cases it is corruption.

A few years ago, Mr. Chairman, I tried a case against one of the public service corporations in this city. It was a very important case, and a very eminent lawyer, who is now a delegate in this Convention, represented that corporation. The case was well tried. It took us a long time to try it. The jury retired and deliberated for thirty-six hours and then brought in a disagreement. The judge who presided was so interested in that case that he informally polled the jury, and it was found that that jury practically stood eleven to one, and that the twelfth man would not yield to argument, would not discuss the evidence, and would do absolutely nothing except to vote the way he did upon the first ballot. That was a disastrous experience in my own practice, and I have no doubt that every lawyer who has practiced in the courts of this Commonwealth has met with similar, if not worse, experiences.

Unanimous verdicts of juries, when they do not bring forth disagreement, bring forth what is even worse than disagreement, and that is a compromise verdict, which does not represent in any sense the true feeling nor the true opinion of all of the jurors. You all know of cases where when one man, for whose interest it is to hold up the jury, or "hang up" a jury, says to the rest of them: "I will stay here all night, and I will not yield from my position," some of the rest of the men get tired; some have wives and children at home, some have illnesses at home, and, rather than sacrifice their own convenience and comfort, which they cannot do in all cases, they have to yield, and yield to that one man, who may be either ignorant or corrupt, but, at any rate, is not the man who represents what justice should be upon that verdict. Then you get a compromise verdict, which is not the verdict that the jury ordinarily would render.

Some time ago a case was tried in our courts in Suffolk County where the plaintiff sued on two promissory notes, each for $1,000. The defence to both of them was forgery, and the only logical verdict that the jury could render was either a verdict for the plaintiff in the sum of $2,000 and interest, or a verdict for the defendant. The jury

was out for a long time and brought in a verdict of $1,000. Forgery was the defence on both notes, both notes given at the same time, by the same party to the same party; and then they compromised upon a verdict for the plaintiff for the sum of $1,000.

In a great many personal injury cases there is precisely the same situation. A plaintiff injured by a public service corporation has a meritorious case. The question of liability is doubtful, but if the liability is fixed that plaintiff should have a substantial verdict, a verdict that should be commensurate with the injury that he has sustained, if there is liability. The jury goes out. One man or possibly two men on the jury are favoring the defendant, and they come in with a ridiculously low verdict, which does not represent in any degree, and does not compensate for, the injury which the plaintiff has suffered.

Mr. Chairman, as has been said by the gentleman from Boston (Mr. Sanford Bates), in no other human institution to-day does unanimity prevail. In this very Convention, which is about to change the fundamental laws, the organic laws, of our Commonwealth, could we do anything, could we enact any proposition, could we make any progress of any kind, if we required unanimity? Could the Supreme Court of the United States, could the Supreme Judicial Court of our own Commonwealth, do any business or render any decision, whenever a division of opinion came about, if the unanimity rule prevailed? In corporations millions of dollars are voted away by directors without the rule of unanimity. In all walks of life the majority rules, and in all walks of life the majority rule seems to be sufficient. Suppose two litigants want to settle their differences out of court, and they refer their differences to an arbitration committee of three. No unanimity is required in those cases, and why, Mr. Chairman, should it be required in cases of juries, where they are thrown together from all walks of life and unanimity is less apt to prevail under those conditions than when you select your own tribunal?

Mr. Shea of Dalton: The last speaker has called the attention of the committee to the fact that when this matter came up before the committee on the Judiciary there were several of the members who reserved their rights. In the first instance I was one of those members. The arguments of my friend on the left (Mr. Sanford Bates) and of the gentleman who has last spoken (Mr. Stoneman) had a great deal of weight with me when they spoke before the Judiciary committee. It seemed to me that the majority rule, which was observed in our affairs of government, would apply also to our jury system, but when you come to analyze it you very likely will note that this is not so. Years and years of experience have shown us very clearly that the majority rule in government is preferable, and the more we see of it the more we are convinced of that. But years and years of experience with the jury system have shown us that it is quite satisfactory and the more we see of it the more we recognize its beauty and its strength, and the more we see in it the wisdom of those men who fashioned it. It is apparent that if we are to make any change, the burden is on those who would make that change to convince us that there is need of it. They tell you that the rule of unanimity is bad in all cases, yet the learned gentleman from Boston (Mr. Pelletier) has told you that he would not change a jury in criminal cases. I ask you why? Does he distrust the rule in one case and trust it in another? Why

should he change it on the one hand and retain it on the other? If every man in this Convention is satisfied, and I think most of us are, to retain the present rule in criminal cases, why is it? Is it not true that we wish to get the protection of every man on that jury? Is this because liberty and life are more precious? Yes, indeed they are, but is the principle any different? Gentlemen of the Convention, we of the Judiciary Committee thought not.

It also has been said here that there is a great deal of dissatisfaction found with the present system. Is that a fair statement of the case? They say changing conditions have brought this about. My own years of experience do not justify any statement in that respect but it has been called to my attention by older members of the bar that the litigant of to-day is not to be compared with the litigant of days gone by. In the days gone by they did not mind going out and mortgaging their farms and fighting to the last ditch. They do not do that any more. But if they were satisfied, as they were in the old days when they fought so bitterly, what shall we say to-day, when men approach litigation with so much diffidence and unconcern?

Then they say to-day that the lawyers' position in this matter is only a small consideration. It seems to me, Mr. Chairman, that that is not so. Lawyers are most interested. This Convention is made up of a great many lawyers, who know their success in a great measure depends on the outcome of jury trials; not only that, but they know their very livelihood depends on them. If any one has a complaint to offer, they of all others should know it well. I have taken this up with some of the oldest members of the profession; men whom I have heard come out of trials with complaints, and I have asked them in all seriousness if they were ready to change the system. With very few exceptions I have found that they were not. The Judiciary Committee has given this matter a great deal of attention. It is made up of men of considerable experience. It has recommended that this measure ought not to pass. We trust, Mr. Chairman, that this Committee of the Whole will give this matter due consideration before changing the present jury system in this Commonwealth.

Mr. Davis of Malden: I wish to call the attention of the gentleman from Boston in the second division (Mr. Pelletier) to the fact that one great State that has tried this proposition has seen fit to change it. The Constitution of the State of Texas provided that three-fourths of a jury might render a verdict in civil cases, but it also provided that the Legislature might change that rule and provide for a unanimous verdict. After trying the system of less than a unanimous verdict for a time, — I do not know exactly how long, — the Legislature of Texas found that it did not work and it changed the rule, so that it now requires a unanimous verdict in civil cases; and, so far as I know, that rule is still in force in the State of Texas.

As already has been said I think it is incumbent upon any one who proposes a change in our Constitution in this Convention to demonstrate clearly to us that the change which he proposes will work better than the present method of dealing with the same subject. He must show us that the method he proposes will better serve in the administration of the principles of justice, will better protect human rights. I do not believe, in this instance, that those who have spoken in support of this measure have sustained their position. I know that

the gentleman from Boston in the fourth division (Mr. Stoneman) out of a long experience, covering nineteen years, trying hundreds of cases, perhaps thousands of cases, in this Commonwealth, has selected one or two isolated cases in which he believes that the verdict rendered by the jury was not just and fair. We do not claim that the present system is perfect, and I do not believe that anybody would be so insane as to maintain that any system that is human ever can be perfect. But we do claim that the present system of the trial of jury cases is as near perfection as can be obtained.

The gentleman from Boston in the first division (Mr. Sanford Bates) has called your attention to the fact that less than unanimous verdicts are allowed in Scotland, in many of our States, and on the continent of Europe. I ask you, gentlemen, if this Commonwealth is ready to adopt the system of jury trials that maintains on the continent of Europe? So far as I am familiar with them, from newspaper reports, they seem to be conducted primarily for the entertainment of spectators and not to do justice to the litigants. It also has been stated to you that litigants and not lawyers are interested in this proposed change. If that be true I am surprised that no single litigant who is not a lawyer appeared before our committee in support of these proposed amendments.

Mr. Sanford Bates: I should like to ask the gentleman if it is not true that not only was his hearing not extensively advertised, but that he did not even give me notice, as the proponent of one of the measures, to come and be heard before the committee?

Mr. Davis: I am not familiar with the means taken to advertise the hearing; but the hearings of the committees of this Convention have been advertised in the bulletin and advertised in the newspapers, and the information was easily obtainable by anybody who desired to be heard; and we were especially careful in our committee to give every person who wished to be heard an opportunity to state his case.

Mr. Sullivan of Salem: I might state that I personally know of three instances where the gentleman in the first division (Mr. Sanford Bates) was sent for and could not be found.

Mr. Sanford Bates: I also personally know, Mr. Chairman, — not to prolong this colloquy any further, — but I know I sat for three days listening in the committee on the Judiciary before my matter was reached.

Mr. Davis: The Hon. Edgar Aldrich, in an address before the Grafton County Bar Association said, in reference to this proposition to do away with unanimous jury verdicts:

> For myself I do not see sufficient occasion for a change. My observation is that there are, comparatively speaking, very few disagreements. Out of nearly one hundred cases, civil and criminal, which I have tried since I left the bar, I do not recall but three disagreements.

This is from a man who, at the bar and on the bench, had had long opportunity and occasion to observe the workings of the jury system.

Again, Mr. Chairman, they tell us that the jury is the only body requiring a unanimous decision, that boards of directors, city governments and arbitrators do not require a unanimous decision. I quote again from the speech of the same learned Justice, where he says:

Neither do I see much force in the claim that because a majority of the judges may determine the law, that a majority or two-thirds of a jury of twelve shall determine the facts. The judges have a measure for their law, they have a system, a standard; and if the majority go wrong an intelligent profession and honest courts will correct them and repair the system.

A jury has no measure or standard for a decision of disputed facts. Hence, this great and necessary principle which requires a unanimous verdict.

The distinction here made between unanimous verdicts and unanimous decisions of the court would apply equally to decisions by other deliberative bodies as compared with juries. If a board of directors passes a vote which ought not to pass, it can change that vote at a subsequent meeting and correct the error. If a city government acts hastily and unwisely, that act, too, may be reconsidered subsequently and justice done. It is true that by a new trial or an appeal the litigant eventually may get justice, but that is an expensive procedure.

You have been told the result of having a jury held up by one juror who may be ignorant or dishonest. I should like to have some of those gentlemen state to this committee how many cases they have ever known where such facts existed. I believe, Mr. Chairman, that in disagreements there are very few cases where the jury stands one to eleven, or two to ten. So that in view of the small percentage of disagreements we have to-day, probably three or four per cent of the total number of jury cases tried, the lessening in the number of disagreements would be very small. Now, there are gentlemen who want this committee to believe that jurors are dishonest. Would they have us believe that in nearly every jury in this Commonwealth there is to be found one man who is willing to sell himself to one of the litigants; who is willing to violate his oath as a juror for a bribe? I, for one, have a higher estimation of my fellow-men than that, and I hope that I never shall be compelled to think so lowly of my associates.

Again, Mr. Chairman, the jury system from the beginning has afforded protection to the weak and the oppressed. It has been the great means by which the poor obtained justice in our courts. If we depart from the well established custom in our own State and authorize juries to return verdicts which are less than unanimous, we are inserting a wedge which eventually will destroy our jury system. It is but the beginning on the part of those who wish us to break down this system, who wish eventually to do away with it entirely. You have been told that several of our States already have adopted such measures. You will note, gentlemen, that those States are southern or western States, not one of which compares in any degree with this Commonwealth. A citizen of Massachusetts is able to point with pardonable pride to the workings of our judicial system. We have had a long line of eminent judges, who have seen to the just administration of law in our courts; rich and poor can obtain justice; and I do not believe, gentlemen, that we are going to rush to change that system on the demand of a few. It is true that certain writers on the law for years have advocated such a change. But, gentlemen, ordinarily a person who writes learnedly on the law is one who, having failed at the bar, spends the remainder of his life nursing a well developed grouch, and writing learnedly on subjects about which he has little practical knowledge. I trust, gentlemen, that the report of the committee on the Judiciary will be accepted by the committee in these cases which involve the same principle.

Mr. WHIPPLE of Brookline: I am impressed with the fact that this is an exceedingly important matter which we are discussing; I think it deserves argument and grave consideration. As I have listened to what has been said I have tried to state to myself, to fix in my own mind, the arguments which can be made in favor of requiring a unanimous verdict of a jury, and I can find only one that impresses me, and that is that it is a system which we have had for years, a system which we always have had, and we are reluctant to change. That is the only argument I find in favor of retaining the requiring of a unanimous verdict. But, on the other hand, there have been able and cogent arguments presented, and well presented, why a change should be made. I shall not attempt to repeat them because they are impressive enough as they have been stated, and I can hope to contribute but little in addition to what has been said.

There is one thought, however, which perhaps has not been expressed. Litigation to-day is exceedingly expensive, — expensive not alone to the litigant but expensive to the Commonwealth; and personally I have had an experience similar, — and more than one indeed, — to that of the gentleman who sits at my left (Mr. Stoneman). Only a few years ago, for six or seven weeks we tried diligently a difficult and important case, only to find at the end that there was one man who had made up his mind very early in the trial and who sat disputing with his eleven associates for some thirty-six hours, until they were discharged. When we are late at court we are reminded by the judges that a session of court is held at an expense to the county of $300 a day; you can figure how much it costs the county to have you ten minutes late. You can figure six weeks at $300 a day and see what that trial costs the county, and then also what another trial would cost the litigant. Why, what better judgment would you get by having the decision of twelve men than if you had had a majority of the jury? I fail to see.

Furthermore, although such things seldom happen, it is known that such things as tampering with the jury occur; and if that is attempted it is much easier to reach one man, who can tie up a jury just as effectively, as far as the plaintiff is concerned, as if he could have a verdict declared in favor of the defendant. It is an aid to the wealthy litigant, the man with the longest pocketbook, the wealthy defendant, the wealthy corporation defendant, because everything that goes for uncertainty, everything that goes for delay, everything that goes for expense, makes in favor of that defendant, and makes it unfair for that plaintiff. You are removing an incubus on litigation and in favor of those of slenderer means. As it stands now every advantage is in favor of the wealthy. And you are reducing the cost of litigation, because cases ought to be heard once for all, and one decision, after a long trial, ought to be enough to settle the controversy.

Once more, one other consideration; it affects the willingness of gentlemen to serve upon a jury. If they can be tied up, as they so frequently are, by one or two men, kept from their homes, and kept in narrow, ill-ventilated and smelly quarters all night long, and perhaps two nights, they are reluctant to serve upon a jury. But if you make it possible for a majority of intelligent men to determine an issue, determine it once for all, and determine it shortly, as they would in almost all instances, you will remove that objection, and you will get

the better class of men willing to serve upon the jury. For these considerations which have been suggested to the Convention, and those which I have attempted to voice, I am strongly in favor of some measure which will permit the Legislature to enact legislation which will require less than the unanimous verdict of a jury.

Mr. Dutch of Winchester: While I personally am inclined to vote against each of these measures, — for I take it we are discussing both of these measures under document No. 49, — I am not prepared to speak at length in justification of that opinion, except I will say this: That I won my first jury case only because one man out of the twelve held up and insisted on serious consideration of the matter for some three hours and won the entire jury to his view, so that my client, who in that case was a poor client and could not afford another trial and could not afford to lose, was protected by the unanimous rule.

What I arise to speak on is this, — a possible confusion here between these two measures, and the point is made by the closing remarks of the distinguished gentleman from Brookline who just spoke for the poor litigants (Mr. Whipple). We had first of all No. 49 presented; then we had those who have favored chiefly this measure saying that they preferred the second one, No. 203, and criticizing each of them for not being in proper shape.

Now it strikes me that if we are to tackle this matter at all it ought to be No. 49 properly amended; that No. 203 is decidedly objectionable as being statutory in character. It goes into details; it tells when the stop-watch shall be put on the jury; it specifies twelve hours rather than eleven or thirteen. Nobody has shown why twelve hours should be selected rather than four or five or six as is provided in the west, but presumably twelve is better than five or six, because I am told in some western States, where there is a five or six hour rule, they take one ballot and if there is a disagreement they proceed to play some little card game until the time has expired, and then they report in and they do not spend the intervening time trying to get serious consideration to the case. But nothing has been shown why we should write into the Constitution an absolute detail fixing this at twelve hours rather than eleven hours or fifteen hours. I submit we ought to put in here only what is proper in an organic law and if we are to make any change whatsoever it should be in line with the change suggested, namely, that the Legislature is authorized to provide that a lesser number than the whole may bring in a verdict. And to that effect I move the following amendment:

Insert at the beginning of line 4 the words "The General Court may provide that"; strike out the article "a", in line 4, at the end; and strike out where it first appears, in line 5, the word "number"; so that the article of amendment will read:

ARTICLE OF AMENDMENT.

The General Court may provide that in all trials by jury in civil causes the agreement of less than the whole number of the jurors shall be sufficient to authorize a verdict.

Mr. McAnarney of Quincy: It occurs to me, Mr. Chairman, that there may be danger of this committee losing sight of the real and controlling reason why in our law to-day we require a unanimous verdict of our juries. How many of you gentlemen have thought it over

and are prepared to say that you know why a unanimous verdict is required? What reason has my learned friend on my right from Brookline (Mr. Whipple) or the gentleman in the first division (Mr. Sanford Bates), who have assailed this provision of our law, given to you why the law exists? Out of the wealth of their knowledge and experience they assign only one reason, and that is its antiquity. And yet, sir, there is not a lawyer who has had a broad experience in the trial courts of this Commonwealth but knows that is not the true reason. The real reason, the true reason, the reason is, it is there for the protection of the poor and humble as well as the wealthy and the powerful, for all parties who may come before our courts.

When I sue my fellow-man what do I do? I invoke the courts of this Commonwealth. I take him from his daily occupation. I compel him to employ a lawyer, I compel him to go out and get witnesses, I bring him before the court. In the exercise of my legal right under the law I have a right to do all this. What does the law then say to me in the protection of that man's rights? "Mr. McAnarney, before you take one dollar of that man's money you must go before twelve honest, true men of your county and show to those men, satisfy them by the fair preponderance of proof, that you are entitled under the law to take his hard-earned dollars out of his pocket and put them into yours. When you do that you will be entitled to a verdict in your favor, but unless you do that you will not be entitled to such a verdict."

What does the court say to those twelve men? It says to them: "Gentlemen, before you return your verdict for either of these contestants," — for the plaintiff, if you will, if we are to try this question on the basis of a tort case, — "for the plaintiff, if you will, — you should be satisfied, each of you, — each of you, by a fair preponderance of the proof, that the plaintiff under the law is entitled to a finding in his favor."

What does that mean? It puts the individual responsibility, a solemn and serious responsibility, upon each one of the jurors. Every one of them then takes the cause under the solemnity of his oath; they retire to the jury room each charged with the duty, if they agree, of coming into court and saying: "I have been satisfied by the evidence, by a fair preponderance of proof." None of them is allowed to shirk his duty as a juror and say: "The majority of my fellows agreed upon this verdict and there was no good of my considering it." The law says each of them must be satisfied in civil cases by a fair preponderance of the evidence. And why does the law say that? Here we come to the nub, in my judgment, of the whole thing.

The law says that because it draws together twelve men from different walks of life, of different training, different habits and mode of thinking and in approaching the solution of every problem that may be submitted to them, each has the benefit of the experience and views of all the other members. What is necessary that a just verdict should be returned when twelve such men meet to consider the proposition? It can be answered in one word, — deliberation. Fair deliberation is what is needed to bring in a just verdict. And, sir, if the jury know that they have got to agree before they can find for the plaintiff or defendant, what does that mean? It means deliberation. It spells deliberation and thoughtful consideration of the problem presented by

the case by each of those men, with due regard for any honest difference of opinion which may exist between them when they retire in the first instance to their jury room. And is not that, sir, what you would want if you were on trial before a jury? Do you want cases decided without due and careful deliberation by each juror? The very purpose of unanimity is not to preserve a relic of antiquity, but it is to carry into the jury room that which every one of us asks, expects and ought to be able to receive, — calm, deliberate, thoughtful consideration by those who are passing upon our property rights or liberties.

Shall you say to the jurors of this Commonwealth: "Gentlemen, you have not got to decide this case by sitting down calmly and thoroughly considering it; go out and poll it as you would a political contest and decide it by a majority verdict"? Or shall you say to them: "Gentlemen, remembering the responsibilities of your oath approach the consideration of this question from the viewpoint of studying it thoroughly and carefully and then bring in your decision whichever way it may go"?

It seems to me, Mr. Chairman, that is the real purpose of the law requiring unanimity by a jury in returning a verdict for either party, and not, as has been stated here, to preserve any piece of antiquity. Is that a wise provision of law? I leave that to the judgment of the committee. Does it appeal to you to be wise? I wonder which one of the gentlemen on this committee, if he had a case which involved his own home and he had worked hard to gather the money together which bought that home and put it into it, — I wonder which one of you if it were a question of whether that home should remain with you in your old age, or pass on to somebody else, and the question was before a jury, would say: "I object; I don't want the jury to be obliged to be unanimous in agreeing upon a verdict; I don't want that jury to be obliged to give careful, deep and thoughtful consideration and study to the question before they find that my home shall leave me and go to some one else." Would you do that? Is there a man here who would protest and object against a jury being obliged to do that? If so, Mr. Chairman, would I be offensive if I said I think he belongs somewhere else?

The burden is not a hard one that is placed upon him who brings litigation into court. All he is asked to do is to satisfy twelve honest minds that he is right, — not to a moral certainty in civil cases, only by reasonable preponderance of proof.

Sir, I cannot and I will not approach the discussion of this question from the viewpoint of those who come here citing their personal experience in one or two cases. It seems to me that belittles the question. I have had some experience in the trial of causes. My experience as plaintiff's attorney has been very large. I also have defended many causes. There are men sitting in this Convention who have represented corporations when I was opposing them, appearing for the plaintiff. And, sir, speaking now from an experience born from all the litigation in which I participated, in not one case would I have preferred to have had the cause I represented decided by a verdict of a majority only of the jury. I wanted in each case the jury to retire and think well and carefully upon the evidence. How true it is we frequently find when twelve men get together there are some of them,

two or three of those men, who, by virtue of their training and business experience, have more knowledge of the particular subject-matter involved in the case than their fellows, and if a majority verdict were to determine the question on the first ballot it might be ten to two; yet when it requires a unanimous verdict those two men, honest and conscientious, responding to their oath of office, sit there and discuss with their fellows and tell them what they know of the problems presented by the trial, lending the weight of their judgment and experience to their fellows. How often their fellow-jurors, profiting by their advice, their knowledge and experience, have reversed the first ballot and brought in a just and true verdict in the end. We have disagreements, — yes, we do; we always will have them. It makes no difference whether you require a unanimous verdict or eight out of twelve or nine out of twelve or ten out of twelve, you still will have your disagreements. But are those disagreements many in proportion to the great number of causes that are tried? Will any lawyer rise in this Convention and out of the wealth of his own experience tell you that in a large percentage of his cases tried under the system now in existence he has had disagreements? None will do so, because the contrary is true; juries have agreed and they do agree in the overwhelming majority of cases.

There is another danger, and if I were to argue this proposition from the viewpoint of a tort lawyer I would say there was a great and an appalling danger to those who represent the plaintiffs in tort cases in less than a unanimous jury verdict. They charge here the possibility that men may be bribed to violate their oath of office, one or two men, and they may control the verdict. Ah, if those one or two men are bribed, if they are of such character they can be bought, how easy it would be for them to bring to bear the fruit of their bribery in the size of the verdict rather than on the question of liability, and how many wealthy corporations there are which would welcome a practice, — welcome indeed with open arms a practice, — if those who represent them were so dishonest as that, which would permit them to throw the weight of their force and their corruption in favor of the small verdict which would mean nothing to the plaintiff. Many times, sir, in my personal experience at the bar, many times within the court-house near by this State House, have I asked the juries in returning verdicts where I appeared for the plaintiff, to return such a verdict, if they decide to render one for the plaintiff, as would be really one in favor of the plaintiff, and not, by bringing in too small a verdict, leave it so that neither counsel nor court could tell whether they really found in favor of plaintiff or for the defendant. What the plaintiff fears is a small verdict, the jury really seeking to bring in a verdict for the defendant.

Mr. Chairman, this is a grave and an important subject. My friend on my left in the first division (Mr. Dutch) when he recited the experience of his first case struck the keynote. It is important for the poor man as well as the rich man. You cannot treat our courts of justice from the standpoint of expense. You cannot measure your administration of justice by the dollars and cents it takes to try a case or what it costs the county. The county does not object. Very often, as my friend on my right (Mr. Whipple) has said, the judges will

remind parties that the county is bearing the burden. But there sits in this room to-day a gentleman with whom I fought a hard case not long ago and we tried it for a whole week and the jury returned a verdict of $750 for the plaintiff, and it cost Norfolk County several hundred dollars to try that case. It was a unanimous verdict. The judge thought it was an unjust verdict and he did not hesitate to order a new trial, although he knew it might lead the county to an additional expenditure of several hundred dollars for another trial. So we want to strip from the consideration of this cause any such thought as expense to the county, because when you come to measure human rights by dollars and cents you are proceeding on false premises.

My friend in the second division, the learned district attorney from Boston (Mr. Pelletier), was asked if he would extend this rule to criminal cases and he answered "No." Why not? That answer gave the whole case away; why not? Are you less likely to get a just verdict in a criminal case if you have less than a unanimous finding of the jury than if you adhere to the established practice of having a unanimous finding? Is it essential in criminal causes to have a unanimous finding by the jury? Do you get nearer the truth by unanimous verdicts of your juries in the criminal courts? Then if you get nearer the truth and your verdict is more apt to be a just one when so returned, if that is a sound argument for criminal causes why does it not carry equal weight when applied to the trial of civil causes? Is the property that I have worked and struggled for for years, which I hope to pass on to my child or to those who may be dependent on me, less sacred to me than a trial of a petty criminal case might be? It seems to me the answer the gentleman (Mr. Pelletier) made was a complete answer to his own argument.

Mr. Chairman, I have taken longer than I intended, but to me, speaking in behalf of litigants of all kinds, I think this matter so important that it would be well for this committee to stand by the finding of the Judiciary Committee. Before I close let me, as a member of the Judiciary Committee, refute the suggestion made in the statement of the gentleman in the first division (Mr. Sanford Bates). After he made the statement that the hearings on this matter were not advertised I spoke with the clerk of the Judiciary Committee, himself a man in favor of the new proposition. I asked him as to whether he advertised the hearings as he was ordered by the committee, and he tells me he advertised them in the Boston Herald, the Boston Post and in a Springfield paper and also the hearings were announced in the bulletin. Any one of the clerks in the Secretary's office will attest the truth of that statement. The hearings on this resolution were advertised. In conclusion, not one lawyer of experience in the trial of jury causes, not one party who ever had been a litigant in our courts, not a man who ever has served on a jury, came before the committee and advocated such a change as is proposed, not one. Their absence was eloquent and significant. [Applause.]

Mr. LOVE of Webster: In reply to the gentleman in this division who has just spoken (Mr. McAnarney), it has not yet been pointed out by any who have spoken on either side of this question that there is a distinction, and a very clear distinction, between criminal cases and civil cases, in this respect: That in the criminal case, the criminal

action, there is but a single issue to be tried, and that is whether or not the defendant is guilty or not guilty. In the criminal case there is no chance for a compromise. The jury is to be satisfied beyond a reasonable doubt on that one single issue, or report a disagreement. But, on the other hand, in civil cases there are two important and two distinct issues to be tried. First: The question of whether or not the plaintiff has satisfied the jury by a fair preponderance of the evidence that the defendant is liable; and then, secondly: The very important issue, in case liability is found, as to how much of a verdict is to be rendered.

It seems to me that the fact that there are two separate issues to be tried in civil actions makes it unnecessary, and makes it in fact undesirable that a jury should be pinned down, confined and constricted, by the necessity of being unanimous in their verdict. I introduced a resolution, Document No. 204, and, like the gentleman from Worcester in the first division (Mr. Johnson), I have no particular pride of opinion in my particular resolution. That provides that three-fourths of the whole number of the jury may bring in a verdict. So far as I personally am concerned, as I said, I have no particular pride in my particular resolution calling for that particular proportion; and I am in accord with the gentleman in the first division, the author of Document No. 49 (Mr. Johnson), as amended by the amendment proposed by the other gentleman in the first division (Mr. Dutch).

It seems to me that this matter, if the principle is carried, may be left safely to the Legislature. I have attended some of the hearings of this committee, and one thing, one fact, which impressed me particularly, in its bearing upon the interest which needy litigants have in this matter, was this: That the representative of one of the largest public service corporations in this Commonwealth appeared before the committee and argued long and earnestly in opposition to this measure, frankly stating to the committee at the outset that he was there in behalf of the public service corporation which he represented, for the purpose of saving that corporation's money. He said, — I am not quoting his words exactly, — but he said in substance to the committee that if this change was made in our jury system it was going to cost the public service corporation which he represented thousands and thousands of dollars in the future, because, he said, there always is to be found, on any jury, one or two men, or sometimes more, — but one or two men at least, — who can be depended upon to cut down the verdict, and keep the verdict down to what he, or what the defendant, considers proper. It seems to me that that is the real impelling reason for a change in our system of trials by jury in civil actions; that always there is in a civil action a chance for a compromise, and that jurors who have had more or less experience on the jury realize that fact; and it is not disputed, and will not be disputed by any lawyer who has had any practice of any extent before juries, that time and again one or two men deliberately at the outset of a case, not that they are absolutely convinced that the plaintiff has not made out liability, not that they are absolutely convinced of that, but for the deliberate purpose of cutting down a verdict, will withhold their vote on the question of liability, will vote absolutely and continually against liability on the part of the defendant, in the hope, which often is gratified by the other members of the jury, that a

compromise will be reached which will deprive the plaintiff of that to which he is entitled.

The same thing works, on the other hand, the same rule is applied, in the case of a man who is prejudiced in favor of the plaintiff. A man who is prejudiced in favor of the plaintiff will be in favor of getting the plaintiff something, and will vote absolutely for liability until he brings his fellow-jurors around to the promise of a small verdict. Time and again verdicts have been brought in in civil cases for small sums where there was absolutely no liability on the part of the defendant; and in more cases, the large proportion of cases, the plaintiff has been deprived of his substantial rights. As the district attorney from Suffolk County (Mr. Pelletier) has said, when the litigant goes into court he goes in with the expectation of having his case determined, not postponed, or being obliged to go in again. Furthermore, and what is more important, he goes into court with the expectation and the right, if he is a plaintiff, and the jury finds, or a substantial part of the jury finds, that the defendant is liable, — he goes into court with the right to demand that he shall receive every cent that he is entitled to, and that it shall not be within the power of one or two men to cut down his verdict. On the other hand, if he is a defendant he goes into court with the right to demand, if there is no liability on his part, that he shall not be obliged to spend one single cent.

Mr. French of Randolph: After a longer experience than I care to remember, both in the State and the Federal courts, I have acquired a profound though not, I hope, a servile respect for the verdict of a jury. The jury system, sir, like all other human systems, as has been so frequently said, is far from perfect, for "except all men were good," as More says in the "Utopia," "all things cannot go well." And there are bad juries and good juries because there are bad men and good men; there are weak juries and strong juries because there are weak men and strong men. It is unfortunate for a litigant on either side of the case if he is obliged to present his case or his defence to a weak jury or a jury the majority of whom, as is sometimes the case, are the weakest men upon the panel. It is a misfortune if a party comes before a bad jury, for the same reason. Of course we all know who have had experience in jury trials that the men upon a panel often vary widely not only in their experience, in their intelligence, in their education, but in their sense of honesty and justice.

Now, sir, I have had the pleasure and the honor of meeting in contest before a panel of twelve men many times, — more times perhaps than any one man in this Commonwealth, — the able and eloquent advocate from the city of Quincy (Mr. McAnarney), and I should have undertaken, if he had not, to state to you, Mr. Chairman, and through you to the Convention what he has said to you in more eloquent language than I could express it. There is only one thing, sir, that I believe I can add to what he has said. We are dealing now, — and he has suggested it in another form of words, — we are dealing now with a tribunal into the presence of which we are likely to be summoned at any time to defend on the civil side of the court our property, — perhaps *all* our property, — on the criminal side of the court all that we hold dear, our reputation, our liberty and perhaps our lives. Do we wish by the adoption of any of these amendments

to weaken the protection which, under the Constitution and common law, that tribunal has granted to Anglo-Saxons for many generations? Certainly it is obvious that the greater the number that is required by law to be unanimous before our property is taken away or our liberty or our lives, — because the question is the same in either event, — the greater the number that is required to be unanimous the more secure we are. And my learned friend from Quincy has pointed that out. If we reduce that number we are giving up one of the big securities which the Constitution of Massachusetts as framed by the fathers, developed from Anglo-Saxon jurisprudence for many centuries, has given us for our protection.

Now what he has not stated, sir, it seems to me, is the practical reason for demanding that unanimity. It is not a question of tradition, it is not a question of sentiment, it is not a question of twelve individual men; it is a question of unanimity, — and why?

Everybody who has tried cases, both on the civil and criminal sides of the court, who has tried personal injury cases as I have for the defendant and for the plaintiff, who has tried criminal cases both for defendants charged with most serious crime and for the government against other defendants, must come to realize when he arrives at years of experience that there are two things that are inimical to a proper verdict by a jury, two things that are lodged in the heart of every human being, two things that are harder to dislodge than almost anything else, two things that menace the due protection of the rights of the citizen, whether he be a poor man or a rich corporation. Those are the two things, sir, which prevent juries over and over again, if they are weak men or bad men, from rendering a true verdict and lead them to a verdict that is not based upon their reason, not based upon the evidence but based either upon the sympathy or prejudice they acquire regarding the case or regarding the plaintiff or defendant. And that sympathy or prejudice I have found not by any means to be exerted solely against defendant corporations but to be exerted against the poor as well.

I suppose I have suffered from disagreements of the jury as frequently as any other member of the bar. I have tried cases where for the moment I was extremely indignant with a minority holding out against a majority. On the other hand, in an equal number, perhaps, I have been grateful to a minority for holding out against their fellows.

I do not know, sir, whether an illustration from personal experience may be taken in lieu of argument, but I happen to be able to draw from mine an illustration which is familiar to a very distinguished member of this Convention who happened to be on the other side of the case, and which I think is most apt as against the suggestion contained in the second of these resolutions, namely, that the verdict of ten shall be accepted after the lapse of twelve hours as the verdict of the jury.

Ordinarily when a jury stands ten to two there may be a difference of opinion as to whether the two are right or wrong. But unanimity is based upon the well-known human experience that minorities are often right, that the strong men sometimes will stand up against the bias and prejudice of their fellows who are weaker and will not allow an injustice to be done, whether it be against the rich or the poor. Oftentimes, and almost always, it is a matter of opinion merely, but

in the case to which I refer I am able to say that the two standing out against the others were right. It was an interesting case, a suit for personal injury, which I defended for a public service corporation in which I was satisfied that the corporation was right. But you will ask how I know that the minority were right in that case. The jury went out at three o'clock in the afternoon after a very able charge by a judge who is now a member of the Supreme Judicial Court of this Commonwealth. There were two men upon the jury, sir, and only two who had passed the age of 65 years; the others were middle-aged or young men. These two men were men of standing and substance in the communities in which they lived, far above any suggestion of bribery or any improper suggestion of any sort. That jury stayed out all night and came in at ten o'clock in the morning and reported a disagreement. The judge polled the jury and it was found that these two men, — these two old men, — had stood out all night against the opinion of their fellows. It was a sympathetic case; it was a case where the plaintiff was an honest man and partly, perhaps, because he was an honest man, he ultimately lost his case. I had argued to the jury that it was perfectly obvious from the plaintiff's own testimony, upon his cross-examination, that with reference to this accident he had not taken a single precaution for his own safety and that whatever the negligence of the defendant might have been it was clear that he ought not to recover, because, without a particle of care, he had put himself in a position of danger which resulted in his injury. The presiding judge read to the jury a case which is familiar to every lawyer in this Convention, modified to suit the occasion, — the case of *Commonwealth* v. *Tuey*, — which is a kind of usual pressure brought by the court on juries to induce them to agree. The jury went out again and did agree and came in with a substantial verdict for the plaintiff. I took the case to the Supreme Judicial Court, which decided that the verdict could not stand and that judgment should be entered for the defendant, because as the court said, it was perfectly apparent upon the testimony of the plaintiff himself, who replied honestly to the questions which I put to him, that he alone was to blame for the injury which he had sustained. That case is the case of *Ferguson* v. *Old Colony Street Railway Company* in the 204th Massachusetts. But, sir, I am not discussing this question from the point of view of the Old Colony Street Railway Company or of any other corporation. I have tried many cases for the plaintiff against similar public service corporations and I do so still. But I think, sir, that we do not wish our property be taken away from us by sympathy and prejudice, just as we do not wish our liberty, our lives or our reputations taken away from us, by anything less than the unanimous consent of twelve men who constitute a jury under the common law. [Applause.]

Mr. Cusick of Boston: As a member of the Judiciary Committee, which was described yesterday as a rather conservative committee by the member in the fourth division (Mr. William H. Sullivan), I think it is only fair to ourselves and to the Convention to state our position in regard to this matter, on account of the latitude which this argument has taken. In regard to document No. 49, I believe it was a unanimous report of the committee. The same is true of Nos. 208, 204, 206 and 207; the reason being, Mr. Chairman, that we made a clear distinction between the resolutions under those docket numbers and

the resolution expressed in document No. 203, and I believe three members of that committee reserved their right to dissent on document No. 203, but it is not printed in the calendar.

As this thing lies in my mind, and as it was discussed by our committee, there is a great distinction between resolution No. 49 and the rest, and resolution No. 203. We felt that we did not want to go so far as to give the Legislature the right to specify the number of men which should be necessary to declare a verdict in civil cases; we dissenters believed in resolution No. 203, that made five-sixths a part of the organic law of this Commonwealth, not even giving the Legislature the right to change that; and there is a great distinction between those resolutions which we are arguing. I listened to the very seductive speech of the member of the committee in the third division (Mr. McAnarney) in which he discussed this matter more from the point of view of allowing the Legislature to allow a majority of the jurors to bring in a verdict than he did from the viewpoint as expressed in resolution No. 203; and inasmuch as we are discussing No. 49 and the amendment to it, which is in the same class as the other resolutions outside of No. 203, I want to ask as a matter of information whether we should discuss the question embraced in resolution No. 203 at this time.

The CHAIRMAN (Mr. Quincy of Boston): The Chair has allowed the discussion to take a wide range thinking that it would expedite consideration of and voting upon the various resolutions printed in the docket; the Chair has not undertaken to confine the discussion to the particular one of those resolutions which comes up first. Strictly, the only matter before the committee is the subject involved in document No. 49.

Mr. CUSICK: On the amendment which is the question now before this committee I desire to record myself as being opposed, but I still want the committee to understand that when you take up No. 203, in order that those members of the Judiciary Committee may have their position placed properly before this body for your consideration, we want to discuss No. 203 at that time; and if it is your ruling that we are now discussing No. 49 only, and the amendments of similar character, then I desire that I should be recorded as opposed to that, as we agreed in the committee on that subject.

Mr. MAGUIRE of Boston: The committee on the Judiciary gave this matter very careful consideration. I am bound to say that because of the observations of the gentleman in the first division (Mr. Sanford Bates) and the gentleman from Webster (Mr. Love). We heard them very sympathetically. I heard them particularly with an open mind, because I have known the gentleman in the first division for a great many years, and I roomed very close to the gentleman from Webster at college. The fact that a representative of a public service corporation appeared there against the measures rather disposed me to favor some abrogation of the unanimity of the jury, because when I see a representative of a public service corporation on one end of a proposition I either "see red" or immediately take the other side. This is due to years of experience or years of activity in behalf of the people of East Boston, as president of their trade association. Two-thirds of our time was taken up preventing corporations from getting or trying to get what they ought not to get. Take the matter of the tunnel

toll, take the matter of freight railways in the public streets, take the matter of the price of gas, — all those agitations for improvements, or for a reduction in the price of some service that these corporations were obliged to give the people, were always a matter of hard work, a matter of difficult work, either to get their ear or get them finally to give what the public demanded.

So that when the gentleman representing this corporation appeared before the Judiciary Committee in opposition to the proposition, some of us rather inclined in favor of it. But that gentleman, representing that corporation, had very little influence with the committee. For instance, one day he attacked the jury system as a whole, next day he found fault with the judges because they lacked the moral courage to set aside verdicts that he felt were unjust, at another time he found fault with the membership of the bar, because it contained, in his opinion, a number of illiterates. Such a pleader had no influence, no influence in any manner.

When many of the members get up here and debate a proposition on which the committee on the Judiciary has taken the stand that they do not like, the first thing seems to be to "kick the hound aroun'." The gentleman up in the back row there yesterday slurred us because we, from his point of view, were an unsafe committee to consider a proposition. Now, the bricks are flying again and it is about time that the pastime was stopped. This committee has had probably more matters before it than any other. It was presided over by the fine old Roman from Fall River (Mr. Morton). The attendance of members at the committee hearings was almost complete; in fact, so much so that everybody who appeared before the committee remarked on the full attendance. In considering this proposition, — and we debated it thoroughly in committee, — it seemed to us that fundamentally it was taking away from the individual a right or a power which he now has. To some of us the tendency of the time, if the people or some of the people find fault with the way that a political unit acts, is to take away from them, for instance, the right to send members to the city council, or the right to send members to a large school-committee, or to take away from them the right to have district aldermen. In short, there is a tendency, if there is a fault or a flaw in the operation of a governmental function, to take away or abrogate the power or right of the people to control it.

So the proposition with reference to unanimity of the jury is because some lawyer or because somebody who goes into court is dissatisfied with the verdict, and then finds fault with the system. The only trouble from my point of view with reference to the jury system is that most of the public service corporations of the Commonwealth maintain a "gum shoe squad," which infest the court-houses of the Commonwealth. I think that the public service corporations are to blame for the cloud that overhangs the operation of the jury system. I think if the gentleman, the district attorney from Suffolk County (Mr. Pelletier), would apply himself to that particular difficulty with the jury system within his jurisdiction, there would be less fault-finding with it. Let us get to the root of the trouble. Do not abolish and wipe out the jury system because some corporation gets one juror and another corporation gets another juror in different cases. Rather let us get together as members of the bar and as public citizens

generally, drive out the "gum shoe squad" from the court-houses of the Commonwealth, and make them disband. Then have the several political units be careful about the selection of the members of the jury, or the jury list. It seems to me the whole thing resolves itself into the question of practical honesty, of a practical operation of our administration of the law. It is not fair, it is not just, it is not right, for this Convention to submit to the people a proposition taking away a power that an individual now has. If you take away the power from one man you take it away from all. That right to stand up in a jury room and insist and fight for what you believe is right has come down through the years; and I do not believe it is just, I do not believe it is fair, because the public service corporations in the last twenty-five years have thrown a cloud over the system by their methods, and every member of the bar knows it, to change the system! Every member of the bar knows that the "gum shoe" squads are interfering with their clients, interfering with every jury trial that takes place in every court-house in the Commonwealth.

I submit, on those facts, that the case has not been proved, and that it is the duty of the district attorney from Suffolk County, it is the duty of district attorneys in every county in the Commonwealth, to see that the jury system is protected, to see that it regains its prestige, that it is preserved as it came to us from the beginning.

Mr. MORTON of Fall River: I should like to say a word or two in regard to the matter which is now before the committee, and what I say in regard to the pending resolution may be taken also to apply to the kindred resolutions.

It is twenty-seven or twenty-eight years, Mr. Chairman, since I was at the bar. Then my honored and honorable friend, Governor Brackett, whom I am sure we are all glad to see here, did me the honor to appoint me to the bench, and since then, for upwards of twenty-three years, I was upon the court. For half a century or more I have been face to face, at the bar and on the bench, with the operation of the jury system in this Commonwealth, and I have a firm conviction, Mr. Chairman, which has grown strongly as the years have gone on, that for the determination of the facts in the ordinary cases between man and man there is no tribunal equal to that of twelve honest men, guided and instructed by a trained and learned judge.

Of course, as has been said more than once, it is not a perfect tribunal. No tribunal is. But, as I have said, for the determination of the facts in the ordinary cases that come before the courts between litigants, I know of no tribunal that is better than a jury of twelve honest men.

Of course there are disagreements. The lawyers have their disappointments at the hands of the juries, and they have their disappointments at the hands of the courts too. But, because there are disagreements is that any reason why we should change the number which now is required to render a verdict, from twelve to a less number? It does not seem to me that it is. I think, too, that the number of disagreements is not so great as some of our friends seem to think. For myself, — you will pardon a personal reference, — as I have said, for upwards of twenty years I was in a position to know whether juries disagreed or whether juries did not disagree. And in my own experience, at this speaking, — I will not say that I am right, because very

likely I have forgotten instances that occurred, — in my own experience I recall only two instances of disagreements. I recall only two or three instances in which the verdict of the jury was such that I felt obliged in the interests of justice to set it aside. I do not mean to say, Mr. Chairman, that I am absolutely correct in that statement. I only make it to the best of my recollection at this present moment. So that when gentlemen talk about the disagreements of juries as a cause why less than a unanimous verdict should be allowed to be returned, I think the alleged evil is, to say the least, much exaggerated.

Then, too, I want to speak of another thing, Mr. Chairman. Something has been said here about the corruption of the juries of Massachusetts. I have tried jury cases from one end of the Commonwealth to the other. No lawyer, no party, ever applied to me to have a jury verdict set aside because of improper influences upon the jury which had rendered it. You, gentlemen of the committee, have served upon juries. Your friends and your neighbors have. Were you conscious that bribery and corruption were at work in the panel to which you belonged? Did you believe that your neighbors and your friends were bribed and corrupted when they sat upon the jury? Again I think, Mr. Chairman and gentlemen, that, if there has been any corruption, there has been much less than people would have us suppose.

Something is said about the compromises which juries make. Of course they compromise, and their right to compromise is recognized by the court, as it should be, and as it has been, as a means of arriving at a just verdict. When a verdict is rendered the court accepts it, and the fact that it is reached by way of compromise between intelligent and honest men should not, and does not for a second, invalidate it.

Mr. Chairman, I think that is the substance of what I want to say to the committee about this matter, about this particular resolution and about the kindred resolutions, — for I class them all together in what I have said to the committee. I sincerely hope that the action of the Judiciary Committee will be sustained. I should regard it as a misfortune to the judicial system of Massachusetts if this Convention should adopt a resolution that less than twelve of a jury should render a verdict, and if that resolution should chance to be adopted by the people of the Commonwealth. [Applause.]

The debate was continued after the recess.

Mr. Sanford Bates: I regard it as particularly unfortunate, Mr. Chairman, that the impression may have gained circulation that I had in any way criticized the committee on Judiciary. I did not volunteer any such suggestion. The gentleman from Malden in the third division (Mr. Davis) commented, as an argument against this proposition, on the fact that no layman had attended the hearing, and I simply wanted to bring to the attention of this committee the fact that that was not at all to be wondered at, because probably no layman had heard that there was going to be a meeting that day. I want to say now, Mr. Chairman, that I entirely appreciate the courtesy which the committee on Judiciary have extended to all petitioners, and to say that during the three days, or parts of three days, that I sat before them, they all were present and to an unprecedented degree exhibited fidelity and intelligence, which is rare in the State House.

Now, Mr. Chairman, I do want to answer what seemed to me to be one or two fallacious arguments which have been advanced against this measure.

First, taking up the objection which was raised by the gentleman from Winchester (Mr. Dutch), I had prepared an amendment which I would have submitted to my own resolution when it was reached, namely, No. 203, which would cut out of it all detail and all legislative or statutory matter, and leave it simply a permissive proposition to the Legislature to enact a jury bill, and the matter of deliberation could be left to the Legislature. If they think twelve hours is sufficient, all right. My position now is that any proper amendment which will establish as a constitutional provision that we now resolve to do away with this outgrown, archaic, traditional system of unanimity in juries, I shall be in favor of.

I should like the privilege of examining just for a moment analytically, if possible, the splendid argument of the gentleman from Quincy (Mr. McAnarney). We around Boston have a considerable respect for him, and it never has been better demonstrated than to-day what is the basis for his success at the Suffolk County and other county bars in Massachusetts. But the eloquence of the gentleman from Quincy does not supply the lack of cogency in his argument. He started out, Mr. Chairman, to show us a reason for the unanimity. Stripped of all its eloquence, and stripped of the oratory, it comes down to this: The traditional argument, namely, that we always have had it; secondly, the argument of protection; and thirdly, the argument that it necessitates deliberation by placing the responsibility on each member of the jury. I think, Mr. Chairman, that I have stated fairly the three really salient arguments that he advanced apart from his eloquence. The fact that this is a traditional system of unanimity does not mean that we in a Constitutional Convention should adhere to it, unless there is some good reason and some logical reason why we should.

I have not any doubt that when he came to the second point of his argument a great many members of this committee were impressed by it. He tried to link up as one principle that constitutional safeguard which we throw around a defendant accused of crime and apply that same constitutional safeguard to a defendant in a civil case; and I say to you, Mr. Chairman, that I am astonished that a man of the learning and ability of my friend from Quincy should undertake to stand before this Convention and obliterate the distinction in theory and practice in the civil and criminal side of the court. He argues to you that no man has a right to be in this Convention who says that if you abolish unanimity in civil cases you should not abolish it also in criminal cases. Why, Mr. Chairman, the first course that a lawyer takes up shows the difference in procedure in civil and criminal cases, and most laymen who never have studied law are taught that difference. To enumerate only a few of the differences: a defendant in a criminal case may challenge 22 jurors, if I am correct; in a civil case he may challenge only 2.

Mr. McAnarney: Will the gentleman feel offended if I suggest to him that his recollection of his elementary studies in criminal law must have gone amiss? The defendant in the ordinary criminal case does not have 22 challenges. There are certain cases only in which that is true.

Mr. BATES: I am glad at least that I have informed my friend to the effect that there are other distinctions than those which he named between the civil and criminal sides of the court. That is my only purpose in stating these facts. The burden of proof in a civil case is merely by a preponderance of the evidence; in a criminal case it must be beyond a reasonable doubt. In a civil case, either party may summon the other party to the action to testify; in a criminal case, the defendant cannot be placed on the stand unless he willingly goes there. I submit that there is a vital and a fundamental difference between juries in criminal cases and in civil cases. As I stated before in my argument, the fundamental difference is this: In a criminal case a defendant is opposed to all the power of the State behind the prosecution, and it is fair and right that he should have the benefit of many privileges, and one of them is that the State shall convince every member of the jury that he is guilty beyond a reasonable doubt; but in a civil case, Mr. Chairman, the State takes no part in it, it is merely an argument over property, or over reputation, or over something of that kind, between two individuals.

The fundamental doctrine of our law is the equality of every man before the law, and our Constitution ought to write into it every single provision that will maintain that equality. And what astounding proposition does my brother advance except this: That the defendant in a civil case should be protected? That is what his argument of protection amounts to, Mr. Chairman, that you shall not take the property of the defendant unless you can convince every one of twelve men that you ought to take it. Again, I am astonished that a man who has tried so many tort cases, so many cases before our courts, should come here and argue on the assumption that every plaintiff is trying to steal something from every defendant. That is the logical outcome of his argument, that the defendant at all costs must be protected against the onslaughts of an unscrupulous plaintiff.

Why, Mr. Chairman, the courts of our Commonwealth exist for the redress of wrong. They exist for the benefit of every humble citizen who takes his cause into court, there to get a decision of twelve good men and true. And so when the working-man to-day has his leg taken off in a factory, or the man loses his life on a railroad car, or something of that kind, his widow, or himself if he is still alive, goes into court to obtain back again what that corporation or that defendant has taken. The proposition as outlined by my brother is that at all costs that defendant should be protected; and what does it amount to, Mr. Chairman? The argument amounts to this: That while this man who has been robbed of his rights or deprived of something that he ought to have, or been damaged by the carelessness of the defendant, must convince twelve men, the defendant need only convince one. That is the logical outcome of it, because so long as that defendant can convince one man to hold out, that plaintiff who has been deprived of his rights never can receive them. So the proposition as we put it to you to-day is that you shall legislate equality in civil actions, and that you shall give to the plaintiff as much right, or nearly as much right, as the defendant has, to have a fair hearing. I think that whole argument of his, beautiful as it sounded and eloquent as it was, was based on the fallacious assumption that the plaintiff is seeking to get something that he or she is not entitled to, when as a matter of fact the plaintiff

is trying merely to take a peaceable, civilized method of redressing a wrong which has been committed upon him.

His second argument, on which he did not dwell very long, was that the responsibility can be placed more nearly on a jury with a unanimous verdict than with a divided one. I say that the contrary is true. I say that the Legislature under this amendment will pass a law which shall require the jury, if they divide, to record their dissent and record their verdict; will put a responsibility on every member of that jury that he will not lightly side-step. I say that instead of the responsibility being removed, it will be increased. Some argument was made that this was too short a time for deliberation. My measure, Mr. Chairman, requires that this jury shall deliberate for twelve hours before they are permitted to bring in a minority verdict, and I submit to you that a man who will hold out for twelve hours ordinarily has an honest and a sound conviction.

I hope that this Convention will look at this matter squarely on its merits. Do not consider any one of these particular measures. The subject before us to-day is whether we are going to cling to a traditional theory of jury verdicts, or whether we are going to have a common-sense one. It makes no difference to me, or, I venture to say, to any of the proponents of this legislation, which is taken, so long as some measure is taken which shall give the Legislature the power and the right to dispose of this matter in the way that they think proper. I hope that for the purpose of arriving at something which will meet the favor of this Convention this matter will be favorably reported to the Convention.

Mr. Blackmur of Quincy: In view of the fact, Mr. Chairman, that these debates are to be preserved to posterity, and that the remarks made by the gentlemen are to be placed in print, I desire to call attention to and to refute specifically a statement made by the gentleman in the third division from Boston (Mr. Maguire). As I understood him to say, and it has been verified by an examination of the record, he stated in his discussion of this subject this morning that "every member of the bar knows that the jury squads maintained by the corporations are interfering with every jury trial which takes place in every court-house in the Commonwealth." Mr. Chairman, I have the honor, or have had the honor, to defend on behalf of one public service corporation some of their cases tried in Norfolk County during the last five or six years, and during that same period of time I have had an opportunity to observe the defence of that class of cases by the gentleman who spoke some time ago and who sits behind me in this division (Mr. French), he defending on behalf of the Bay State Street Railway Company. And sir, I want to repudiate the base suggestion that was made that the corporation which I defended, or any corporation, maintained any squads of "gum shoe" men or interfered with the due course of justice. There is altogether too much of such loose talk made in this Commonwealth, which goes out to the people and prejudices and befogs the issue, and it is high time that some one refuted it.

Much has been said, sir, regarding the disagreements of juries. I have had the privilege of practicing law in the courts of this Commonwealth for twenty-six years only, and during that period eight years were devoted to the defence of the city of Quincy as its solicitor.

I cannot recall one single instance where a disagreement that I knew anything about was the eleven to one disagreement so frequently referred to. There may have been some disagreements where there were two or three holding out, but I do not recall them at the present time. And, sir, I think you will find, as the learned ex-Justice of the Supreme Judicial Court (Mr. Morton) stated, very few instances where a disagreement has been recorded by any small number holding out, as has been suggested.

Now what would be the effect if a majority verdict might prevail in some instances? We will take, for illustration, the young man who is defending his client, the young lawyer who perhaps has had not very much experience, pitted against the learned and great advocate who resides in Brookline (Mr. Whipple). What chance would he have if my learned friend of Brookline had to gather to his way of thinking only a majority of the jury? He would stand very little show. It is therefore as much for the protection of the weak as it is for the strong that we should require unanimity.

I had the privilege here the other day of listening to a statement made by the learned Dean of Harvard Law School, in a discussion of a different subject. He was asked by a member of the committee before which he was appearing what his own views were upon this subject. There has been a statement made that textbook writers and lecturers have little or no experience in the actual practice of courts, but that, sir, cannot be said in reference to Dean Pound, for many years he practiced as an advocate before the courts of several of the western States. He is a man who has had great experience in the actual trial of cases, and he stated that his experience was that in all those States where the majority rule prevailed or the period of discussion was limited to a certain number of hours, then permitting a majority verdict to follow, that it worked badly; and it was he, I think, who said that he knew of cases in many States where the men simply played cards or entered into general conversation after having taken the first vote before they took the other at the termination of the five or six hours, as the case might be.

But, sir, there is one other thing which I desire to call to the attention of this Convention, and that is, one of the great complaints of the jury system to-day is that we do not get the best men in the community to sit. The saving grace of that situation is this: That in a large number, such as twelve jurymen, who are drawn from all walks of life, we have found from experience that we usually get two or three hard headed, common-sense men, whether they be men who labor, small storekeepers or farmers, as the case may be, and it is those men who usually dominate the jury; if they do not dominate it, at least they are the saving grace and furnish the good judgment which saves the jury system. It is usually their discussion, as I am told, the information which they give in the jury room of their own experience, their own common-sense view of the situation under discussion, which has so much to do in ultimately bringing in satisfactory verdicts.

One other thing to which I ought to call your attention, and that is this: We frequently hear complaints about jury trials owing to the frequent setting aside of the verdicts by the court, and yet very few verdicts are in fact set aside by the court, many less verdicts than many lawyers believe ought to be set aside by the court. Now what

is the reason most generally given by the learned judge when he declines to set aside a verdict? He says:

> Although I might myself have decided this question differently had I decided it myself, you have had twelve men sit upon it and determine the question, and therefore I am very loath indeed to disturb their judgment and their verdict, and therefore I believe that the verdict of the jury should stand.

That is the most common statement and finding of the court in such cases. But on the other hand, gentlemen, the very minute you give an opportunity to a majority of the jury to bring in a verdict and have their finding recorded as the verdict in the case, you are going to have tremendously greater pressure brought to bear on the courts to set aside verdicts, because you will have it said over and over again: "Well, this is a divided verdict. There were five men who thought as I did." And the court will not be so certain that justice will make necessary the holding of the verdict that was so rendered. So I say I think it will have the tendency to unsettle verdicts more than it ever has, and you will be likely to have a greater number of verdicts set aside.

Only one other word. My friend, I think in the first division (Mr. Sanford Bates), said some time ago that it was no concern of lawyers, and that it was the lawyers who objected to making the change suggested. Well, sir, all I can say is that I deem it as my duty, and always have deemed it such, that it is the most solemn and vital concern of every lawyer to protect the life, property and interest of his clients and to show an interest in his clients, — and, gentlemen, by "clients" I mean every person who comes to him for advice and help, — and that it is his duty to state to you and to state to every one of the people of this Commonwealth the experience which he has had in the courts in this respect. I should like to call upon some of the gentlemen who have had a great deal more experience than I have in the trial of these cases to state what their experiences have been in some of the other counties of this Commonwealth, as to whether or not, take it all in all, the system which now obtains is the only system which safeguards the interests and the property of the people of this Commonwealth.

Mr. GALLAGHER of Boston: I have no expectation of being able to add a great deal to what already has been said on this question, but I ask the indulgence of the committee for a few moments for the purpose merely of puncturing, if I may, some of the arguments that have been made in defence of the report of the committee.

Great emphasis has been laid upon the fact that the jury system as we have it is an ancient and therefore a venerable institution, and that we now have it in all its original purity and excellence, and because of the results which it has procured we ought not to change in respect to the number of jurors necessary to return a verdict in civil cases. It would seem upon reflection that the argument for the proposition of the committee to reject this report would derive very little force from the antiquity argument furnished in behalf of the system as it stands. We have been changing, or our forefathers have been changing, the jury system almost from the beginning. At first it is to be remembered that the jury were called not to hear evidence, but to give it, and that the necessary qualification for jury service was knowledge on the part of the juryman of the facts involved in the litigation or of

the persons who were party to it. Not a trace of the jury system can be found in Anglo-Saxon times, although I think I have heard it said that it was an Anglo-Saxon institution. Unanimity of the jury was unknown in England until the reign of King Edward IV, and previous to that time majority verdicts by the jury were the law. The jury system never entered or appeared in England or had its place in the common law until after the Norman Conquest. So that we are mistaken if we think that the idea of having twelve men agree upon a verdict is the original ideal of the jury system. It is a fact that the statutory requirement that twelve should agree was made originally with reference to a jury consisting of a larger number. It seems to me that if in the grand jury, where a majority of the grand jury decide the momentous question whether a citizen shall be indicted for murder, or for robbery, or any of the graver crimes and felonies, if, I say, a majority may properly be charged with the very important duty of deciding whether that indictment should lie or not, I am unable to see where justice is violated or where the rights of the individual are at all jeopardized by a provision that in civil juries a majority shall decide with whom the verdict shall lie.

I wish to be recorded in favor of the resolution, — either or both, No. 49 and No. 203, — which will accomplish the purpose of putting it within the power of at least five-sixths of the jury to decide, and at all events putting it beyond the power of the so-called "strong" man, the euphemistically-called "strong" man by attorneys who delight in having at least one man stand with them against eleven of his colleagues.

Mr. Lomasney of Boston: It seems to me, Mr. Chairman, there is a great deal of difference between a verdict for the plaintiff or defendant, a verdict of guilty or not guilty, and an indictment by a grand jury. If the gentleman depends upon that argument, his side falls. Who is heard before the grand jury? Only one side of the case. The prisoner is not heard before the grand jury. The prosecution summons its witnesses and the grand jury hear what they have to say and they find that there is probable cause, — sufficient cause to indict; but they do not say sufficient cause to convict. And the law properly makes a distinction, because a criminal case differs entirely from a civil case. But if you change this law in one case you may have to do it in the other in a short while. The grand jury system gives the government, — the prosecution, so called, — the power to find out what has been done against the interest of the community, and the grand jury hear the case and if a person is indicted he is summoned to plead to the indictment and to have the case tried, and is not guilty, or supposed to be not guilty, until the jury finds him guilty. And that was what I was contending for yesterday.

Now, sir, they said something about the laws of the Normans and Anglo-Saxons. What have all those things got to do with the question here to-day? We are in Massachusetts and we are trying this case to apply to Massachusetts citizens of to-day, not the people of those days. Go back, sir, to the days when the present jury system was adopted. We had different lawyers, different people, different conditions entirely from those which prevail to-day. We had no telephone, no telegraph, no automobiles, and were without many other improvements. But the Constitution was drafted by men who could look forward for

more than a hundred years, and they made it so strong that it seems to me, after listening to the pleas of lawyers on one side and the other, that those of us in this Convention who are laymen should pause and say: When they cannot agree, — these men who are sworn officers of the Commonwealth, who have received the benefits of education, who are supposed to be learned in the law, — when they come in here and cannot agree, why should we change this law which stands for the protection of liberty and for the protection of property? [Applause.]

This law is a great protection for the safeguarding of one's liberty. And, sir, if you change the civil side you cannot help in time changing the criminal side. If you allow the Legislature to say what number of jurors may return a verdict, then the question will first be: Shall it be ten? Then they will fight for nine, then they will fight for eight, and then they will fight for seven, and in the end it will be just as it used to be in the old days when we politicians were fighting to win a convention, — get the majority of the delegates and you win. [Laughter.]

This Constitution of ours has no superior. No one can read it without being impressed by it, especially when one realizes how strongly it is built. Power often oppresses one who is weak, and the early fathers knew that; and they took good care that the minority, weak, humble though it might be, should be properly protected. I can see, sir, great danger to this Commonwealth if it departs from the fundamental system that we have here. It takes men of nerve, — and there are men of nerve in this Commonwealth, — to try to do improper things now, because they know they must get twelve jurors, and even under the most favorable circumstances it requires skilful work to get twelve jurors. You can manipulate, but there is always, — and I hope to God there will be always, — at least one man on a jury who will stand up against power when it is wrong, and will stand for justice, no matter whom it hits, because, as has been well stated here, oftentimes the one obstinate man on the jury is the man who regards his God and his oath and the law of the land as the guides for him to follow, irrespective of the arguments of trained lawyers and sometimes the charges of biased judges, who may not realize the interpretation that is being placed upon their words, and his action often saves the government from doing great wrong and saves innocent men from undeserved punishment.

Do not break down the bars; do not strike the first blow, because to-morrow you may be the sufferer. It is well enough to talk about taking a man's property, — the way we shall do it, — by a majority vote of the jury. What layman came before our committee and said: "Change this organic law"? What body of citizens came before us and urged that this be done? What great need has been shown for it? The lawyers themselves are divided; the case as presented here shows about an equal division; and I suggest under these circumstances the proper thing for this body to do is to leave the document as it stands because they have failed to make out their case. [Applause.]

Mr. Twomey of Lawrence: I presented to the Convention a resolution dealing with this same general subject, a resolution printed as document No. 208, one that has similar provisions to No. 203, with the exception that the number of hours required for deliberation by five-sixths of a jury shall be five hours. I rise to speak on that particular measure at this moment in the hope that it may expedite the

consideration of the general question before us. I have no concern with the phraseology of my measure or of any other kindred measure. My only concern is with the principle involved, whether a jury verdict is to be unanimous, or some majority, be it a bare majority or one that may run as high as five-sixths, to be a sufficient verdict.

It has been admitted by all parties to this discussion that the jury system is the most perfect method of a judicial determination of fact that centuries of judicial thought have been able to produce and centuries of human experience have been able to devise, and yet it is admitted by the most earnest advocates of a unanimous agreement that it is not a perfect system, and with that admission on their lips they ask you men to allow those imperfections to remain, to keep your hands off, even though there is evil there. I do not know that a single proponent of this general resolution believes that it is a cure-all for the imperfection which they admit exists; but I maintain that if there is imperfection there, as admitted, then it will be wholesome for us in our deliberations not to pass over this question until some serious effort has been made to minimize the admitted imperfection. Constitutional Conventions do not meet every year, and if this question is as important as the discussion seems to indicate, then I say it may be well not to say: "Hands off; leave the imperfections there;" but rather to let us see whether my proposal or any other that may be made can minimize the imperfection. It may be well for us to remember that this system came down to us through the centuries from an age when life was different than it is at present, when men were independent beings, when each man produced his own crops, spun his own yarn and weaved his own cloth. It came to us from a country the people of which were practically of one origin. We did not then have the evil consequent upon the present day of infinite complication of interests. We did not have a population so far apart on racial and religious lines as we have in this country to-day. With our system, developed under conditions which are not the same as we have to-day, to say to us: "You must keep your hands off the jury system with its unanimous verdict," is to hold that corruption in the jury room is unknown. That is something more than a mere assertion. There have been convictions for jury tampering in this Commonwealth. It is useless to say that our jury system needs no revision, to deny that the fires of racial and religious prejudice, — or the heat of those fires, — makes its way into the determination of juries. It is not that my proposal will make disagreements impossible, for you still will have disagreements under the majority verdict.

One feature that has not been mentioned with any great emphasis is the fact that the dishonest person or the biased person on a jury is not at all times concerned with the verdict as such; his real interest more frequently is as to the size of the verdict, in the hope that handing out a little something will cause the party in interest to hesitate before passing over the small amount, even though an unjust one. This proposal will not work to the advantage of plaintiff or defendant. It will mean, as far as the plaintiffs are concerned, that they will lose the sympathetic verdicts which they often get, and get improperly and unjustly. There is no reason why a system should be perpetuated which allows sympathetic verdicts, any more than we should allow a system to be perpetuated which allows dishonest verdicts, either as to

the verdict itself or as to the amount. I submit to you, sirs, that if the advocates of the unanimous verdict are right in what they say there is no sentiment for a change of this kind. I would ask them to submit this question to the electorate of this Commonwealth. They ask us to satisfy them by mathematical accuracy that there is anything seriously wrong with our jury system and I would ask them by the same token to defend that system, which they admit carries with it imperfections. That is an astonishing proposition, — that they are not prepared to defend their system, which has been through the fire. The real question is how it has passed through it. Rather is it for them to demonstrate with mathematical accuracy, than for the proponents of these measures, who ask not necessarily a final determination of the question, but at least serious consideration.

I believe that as the discussion goes on consideration is becoming more serious, and I trust that this Convention, or the Committee of the Whole as it now stands, will not take it upon itself, in view of the wide difference of opinion that has manifested itself here, to say that the question shall be finally determined at this time. I submit to those who urge a unanimous verdict that if they really mean what they say, and I also submit to those who are sitting here with open minds, that a fair proposition is that the Committee of the Whole report to the Convention some one of these resolutions, so that the general question shall go before the people of this Commonwealth to determine whether in the light of their experience, which after all is the experience that ought to control the affairs of this Commonwealth, whether in the light of their experience with our jury system they want an admittedly imperfect system perpetuated, or whether some change ought to be made, not necessarily to remedy all defects, but at all events to minimize the imperfections that admittedly exist in the present system.

Mr. FRENCH: If the Convention will be patient with me for a single moment, I should like, sir, out of deference to the obvious earnestness and the obviously honest belief of the gentleman from Boston (Mr. Sanford Bates), to draw again upon my experience for an illustration which I shall ask him to apply to the argument which he has recently made. It seems to be his view, sir, and it may be the view of many laymen and, perhaps, of some lawyers in this Convention, that the rule of unanimity works in civil cases to the advantage of the defendant rather than of the plaintiff. That, sir, has not been the result of my long experience. I want to call the attention of the gentlemen to this case, and, as I have said, apply it to that argument, which I believe perfectly sound.

A year or more ago I tried a case for a public service corporation against a plaintiff, a woman who was injured by a collision in the highway. Mr. Chairman, you will readily see that I must necessarily refer to this experience with more reluctance than I did to the other; I am not so eager to tell this one. The result of that trial was a disagreement, which, if the measure which he now proposes had been law, would have given a verdict to the defendant in that case. But there was a disagreement, and the case came on for trial before another judge, with substantially the same evidence as before. The result of that trial was a unanimous verdict for the plaintiff, by which she received a very substantial sum of money, far more substantial, sir,

than, judging from my negotiations with her counsel before the trial, she was entitled to receive.

It has been said that the advocates of the system of unanimity have admitted that there are weaknesses in the jury system, and therefore weaknesses in the argument for unanimity. That objection is not sound, sir, because the weaknesses in the system are weaknesses that are incident to human nature and to every human institution, and they will attach equally to a verdict of ten as to a verdict of twelve. But, gentlemen, I speak as a citizen and not as a lawyer, and I say to you that I believe that if you permit any modification of the prevailing fundamental law of this Commonwealth with respect to this matter you will be depriving yourselves and your fellow-citizens of a protection which they oftentimes need and by which they frequently profit.

A Constitution, sir, is of no value, — it is not worth the paper upon which it is written, — unless it protects to the fullest extent four things: Life, liberty, property and reputation; or, putting reputation where it belongs, next to life, if not before it, those are the four things one or more of which every article in the Constitution of this Commonwealth seeks to protect. It makes no distinction, sir. Perhaps individuals may prefer their life to their reputation, or their reputation to their life, or their property to their reputation. It makes no distinction, sir, because it is bound to give equal protection to everyone. The difference between a civil trial and a criminal trial is not one of principle but merely one of degree.

Mr. McKeon of Worcester: Had this question been taken before the recess I would not have troubled the Convention to listen to any observations of one so unimportant as myself, but now that the recess has been concluded and there is ample opportunity for discussion, I trust I may be pardoned if I make a few slight observations, by way of emphasis, perhaps, to what already has been adduced in this discussion.

The topic has been very largely and ably debated, and a great and sharp division of opinion has been discovered here, which proves, I think, conclusively, not only that the subject is an important one, but that it is open to very grave doubts. I think the discussion to which we have listened here to-day proves with almost exact mathematical precision that there is a discontent with the present jury system. That being so, sir, I submit to you that if we can, we ought to endeavor earnestly to remove those defects, and thereby allay the dissatisfaction on the part of litigants in this Commonwealth. I bring no personal experience of any value whatever to this Convention, and, while I therefore suffer from many great disadvantages, I have at least the advantage that I bring no prejudices against the jury system. I approve and applaud all that has ever been said in favor of the proposition that the jury is the most excellent tribunal yet devised by man for the judicial determination of facts, but I do not go beyond that and assume that a jury is infallible. I do not agree that in all instances experience has shown that the best and truest verdicts can be obtained by unanimity of verdict upon the part of a jury. In my opinion, sir, the personal experiences of men, whether members of this Convention or not, are of value only so far as they are supported by authority. Their personal experiences must be placed in the scales of judgment and weighed upon the value of authority, and in that scale,

sir, the judgment of the world is against the practice which obtains here.

It has been referred to previously that the jury trial is an ancient institution. It is so ancient that its definite, specific origin is lost in the twilight zone of that far-off day. But the very best opinion that is obtainable by the learned writers upon the law is, as was stated here by a gentleman from Boston (Mr. Gallagher), that when the jury trial was first invented it consisted of a larger proportion of men than twelve in number, and that the only requirement was, that out of that larger number, a unanimity of twelve must have obtained, and I submit to you, therefore, that in its original form trial by jury was upon a majority basis.

May I suggest also that the purpose and the procedure in civil and criminal trials are as opposed as the poles. The purpose in a criminal trial is to surround one individual man who is charged with a public offence with all the safeguards that possibly can be given to him consistently with the public welfare, and the principle behind that practice is that it is far better for the common good that 99 guilty men should escape than that one just man should suffer innocently. And is it to be argued seriously that the same principle is behind the unanimity verdict in civil causes? Is it to be said that it is better for the common good that 99 men who have done wrongs for which they refuse to settle peaceably shall escape the payment of their debts because we require the plaintiff to prove his case with the same degree of care and precision and mathematical certainty as is required from the public prosecutor upon the criminal side of the court? I submit to you that those are two contradictory principles, which, in one harmonious system, ought not to obtain.

It has been argued here in defence of the present system that oftentimes the minorities are right. I submit to you, sir, that no such argument is entitled to be advanced in this Convention, for the reason that the question is not that minority verdicts shall obtain. No man asks that. But if, along the same line of argument, and applying logic to it as far as I can, minorities are often right, is it not more certain, is it not more probable, that majorities more often will be right?

The unanimity of verdict which is required is capable of division, I think, between its theory and its practice. If the practice measured up to the theory, I would be very strongly in favor of maintaining the unanimous verdict of the jury, but in my humble opinion the practice is entirely at variance with the theory. In theory we seek to get the free, unbiased, honest opinion of twelve men. That in itself is a most difficult task. It is against the experience of human conduct and reasoning and the varying intelligence of men that we should reasonably expect any unanimity of opinion among twelve men upon any one topic that is before them, — but such is the expectation. Now, then, does it measure up to that expectation as we find it practiced in the courts?

In the first place, when an issue is ready for decision by a jury they retire into the secrecy of their jury room, and they determine first upon the question of liability, upon which the plaintiff bears the burden of proof. Let us assume that there is a disagreement among the jury as to liability. What usually would happen? What usually does happen? If one or two of the gentlemen who disagree with the

majority are persistent in their views, an attempt is made to reconcile that difference into a whole verdict by suggesting to the minority that if they will vote that there is liability the majority will concede that the sum which they ask to be paid may be lopped off, and thus they agree upon a certain, definite sum, which in no way represents, or is intended to represent, that to which the plaintiff is entitled.

Reference has been made here to the opinion of the court as expressed in *Commonwealth* v. *Tuey*. I have troubled myself to find that citation. In that trial, which occurred in 1851, one of the jurors disagreed until the jury asked to be brought before the court to receive instructions from the judge, and, in the following language, Judge Hoar told the jury what their duty was on their duty of bringing in a verdict:

> The only mode, provided by our Constitution and laws for deciding questions of fact in criminal cases, is by the verdict of a jury. In a large proportion of cases, and perhaps, strictly speaking, in all cases, absolute certainty cannot be attained or expected. Although the verdict to which a juror agrees must of course be his own verdict, the result of his own convictions, and not a mere acquiescence in the conclusion of his fellows, yet, in order to bring twelve minds to a unanimous result, you must examine the questions submitted to you with candor, and with a proper regard and deference to the opinions of each other. You should consider that the case must at some time be decided; that you are selected in the same manner, and from the same source, from which any future jury must be; and there is no reason to suppose that the case will ever be submitted to twelve men more intelligent, more impartial, or more competent to decide it, or that more or clearer evidence will be produced on the one side or the other. And with this view, it is your duty to decide the case, if you can conscientiously do so. In order to make a decision more practicable, the law imposes the burden of proof on one party or the other, in all cases. In the present case, the burden of proof is upon the Commonwealth to establish every part of it, beyond a reasonable doubt; and if, in any part of it, you are left in doubt, the defendant is entitled to the benefit of the doubt, and must be acquitted. But, in conferring together, you ought to pay proper respect to each other's opinions, and listen, with a disposition to be convinced, to each other's arguments. And, on the one hand, if much the larger number of your panel are for a conviction, a dissenting juror should consider whether a doubt in his own mind is a reasonable one which makes no impression upon the minds of so many men, equally honest, equally intelligent with himself, and who have heard the same evidence, with the same attention, with an equal desire to arrive at the truth, and under the sanction of the same oath. And, on the other hand, if a majority are for acquittal, the minority ought seriously to ask themselves, whether they may not reasonably, and ought not to doubt the correctness of a judgment which is not concurred in by most of those with whom they are associated.

Mr. SULLIVAN of Lawrence: I understood the gentleman (Mr. McKeon) to say a moment ago that one of the difficulties with the present system is that jurymen who believe that the defendant is not liable will compromise with those who believe in liability for a large amount to agree upon a verdict for a lesser amount than the latter think the plaintiff ought to have. I should like to ask the gentleman if that would not be a good deal easier to accomplish if only ten men were required to agree, instead of twelve as now.

Mr. MCKEON: In my opinion, it would not be easier where majority verdicts obtain, because the question of liability would be determined first, and upon its merits, and entirely apart from the amount of compensation to which the plaintiff was entitled, if he would be entitled to any, and that therefore very often, and most often, the question of compromise would not at all arise if we had majority verdicts. At least, if that be not true, I think it is absolutely certain that there would be no confusion of the question; that the proposition of liability would be settled by a majority vote in the first instance, and that

thereafter there might be some kind of compromise, because that is in the nature of things, on the question of the amount only. But in that kind of a compromise, sir, no man sacrifices a principle; no man says: "I believe that there is liability here" or that "there is no liability here, but I will agree to pay a smaller (or larger) sum than is just in order to get out of this jury room." I think that the principle which has been so ably argued for in this Convention, that we ought to have a unanimity of verdict, takes account of only a partial view of the subject. Even on their own argument they stop with the verdict of the jury. If that is a valuable right, why stop there? Why permit our courts, upon a majority opinion, to disturb that verdict, which they so eloquently have argued for here to-day?

And one more suggestion by way of emphasis before I close. If the gentlemen who favor the committee's report are so absolutely certain that this measure has no merit, they will amply protect their views by voting to submit the question by way of referendum on the ballot as a part of the efforts of this Convention. If the majority of the people of this Commonwealth are content and satisfied with the present procedure of our courts, I submit to you that they will retain the present practice of the Constitution; but if they are dissatisfied, and if they do approve a measure of improvement submitted to them by this Convention, that they will have obtained that for which they long have sought, in which they most earnestly believe and which they most earnestly desire. [Applause.]

Mr. LEONARD of Boston: I do not desire to say anything upon what I call the judicial phase of this question. It seems to me that that aspect of the question has been pretty thoroughly covered. However, I feel there is another side to this question of jury trial which is even more important than the judicial.

I came here this morning without having concluded my own mind on the subject. So far as the question between litigants goes I am inclined to support the resolution as offered. But it seems to me that we have confined our discussion to the professional side, to the judicial side, and, excepting the very able and very vigorous remarks which were made by the gentleman from Boston in the third division (Mr. Lomasney), the discussion has been confined to lawyer members of the Convention.

I desire to quote a few lines from the observations made by a prominent Frenchman, an aristocrat, who visited America eighty years ago, De Tocqueville. One of the most interesting chapters in his work on Democracy in America is the chapter on Trial by Jury in the United States considered as a Political Institution. I should like to direct the attention of the members to that phase of the question for a moment, especially the attention of some of the gentlemen who have served on a jury, the gentlemen who are laymen and who represent the people, who are finally to decide this question; for if it goes to the polls the lawyers are not going to decide it; the people are going to decide it and, if possible, I should like to stimulate a discussion as to whether or not in some ways the present jury system might be modified. This writer said in 1835:

> The jury is, above all, a political institution, and it must be regarded in this light in order to be duly appreciated. . . . The system of the jury, as it is understood in America, appears to me to be as direct and as extreme a consequence of the sovereignty

of the people as universal suffrage. They are two instruments of equal power, which contribute to the supremacy of the majority. . . .

I am so entirely convinced . . . that the jury is preëminently a political institution, that I still consider it in this light when it is applied in civil causes. . . .

When . . . the jury acts, . . . on civil causes, its application is constantly visible; it affects all the interests of the community; every one coöperates in its work; it thus penetrates into all the usages of life, it fashions the human mind to its peculiar forms, and is gradually associated with the idea of justice itself. . . .

The jury contributes powerfully to form the judgment and to increase the natural intelligence of a people; and this, in my opinion, is its greatest advantage. It may be regarded as a gratuitous public school, ever open, in which every juror learns his rights, enters into daily communication with the most learned and enlightened members of the upper classes, and becomes practically acquainted with the laws, which are brought within the reach of his capacity by the efforts of the bar, the advice of the judge, and even by the fashions of the times. I think that the practical intelligence and political good sense of the Americans are mainly attributable to the long use which they have made of the jury in civil causes.

I do not know whether the jury is useful to those who have lawsuits; but I am certain it is highly beneficial to those who judge them; and I look upon it as one of the most efficacious means for the education of the people which society can employ.

What I have said applies to all nations; but the remark I am about to make is peculiar to America and to democratic communities. . . .

And he concludes:

Thus the jury, which is the most energetic means of making the people rule, is also the most efficacious means of teaching it how to rule well. (Democracy in America, by Alexis de Tocqueville, vol. i, pp. 361–367.)

I have read those few lines because it seems to me that the political side, the business side, the side of the juror, is more important than whether or not more cases are lost for plaintiffs or defendants by reason of this juror or that juror holding out in the decision of particular cases. On the judicial side my mind is fairly well made up, but I should like very much, Mr. Chairman, to hear some expression, before we come to a vote, from gentlemen who have sat occasionally in the jury-box.

Mr. O'Connell of Boston: I do not care to unduly prolong this debate, but I do wish to call the attention of the business men in this Convention to a fact that all of them will recognize, and to a fact that every lawyer and every judge knows to be true, namely, that when judges are picking foremen of their juries they invariably try to pick out the most intelligent man they can get, and they usually pick out some man who has some large interest in a business way.

Talk with any business man who has sat on a jury in this Commonwealth in the last twenty years, and every one of them will tell you that they like jury service, but they have one great fault to find with it. They cannot understand why one man should be allowed to hang up eleven, or why two men should be allowed to stand in the way of justice; and nearly every business man will tell you that, whilst he dislikes the single judge system, nevertheless, when he has a case to present hereafter he would rather present it to a single judge, simply because of his objections to a system that permits one man to overrule eleven.

Gentlemen, there is a distinct defect that we are called upon to correct. It is not a matter of protecting property here, as the gentleman from Quincy (Mr. McAnarney) has said. Is property any more sacred in Massachusetts than it is in the sixteen States of the Union where the five-sixths or three-quarters rule prevails? Is property in Boston any more sacred in the hands of a jury than it is in San

Francisco or New Orleans? Are the rights of the property owners in Massachusetts any more protected than those of the people in Montana, or Wisconsin, or Minnesota? Some of the greatest enterprises in which vast sums of our eastern money have been recently spent, are located in the State of Montana, — such as the Montana Power Company, the Anaconda Copper Company, the Chicago, Milwaukee and St. Paul Railroad Company. Property is just as safe in those States, according to the views of our great trustees, and according to the views of men who hold property most sacred, as it is in this old Commonwealth. I simply say to you, gentlemen, that there is a grave and well-recognized evil to be corrected, and as long as it should be corrected we should address ourselves to it.

The gentleman from Worcester (Mr. McKeon) was interrupted in reading the case of *Commonwealth* v. *Tuey*. He did not read the last paragraph of that case. Lawyers are all familiar with it. The judges try to invoke this same doctrine proposed in this resolution in trials by jury. When a jury has been shut up for ten or twelve hours the judge frequently will call them in, and read this case in 8 Cushing, *Commonwealth* v. *Tuey*. He will try to impress upon them an unwritten law that the minority must yield to the will of the majority. The court says in its concluding argument:

> The jury room is, surely, no place for pride of opinion, or for espousing and maintaining, in the spirit of controversy, either side of a cause.

The evil that we are complaining of here is not disagreements on the part of juries. Juries rightly disagree in many cases, but the evil that we are complaining of is that one or two men can frustrate justice and stop men from getting justice in our Massachusetts courts. I, for one, trust that something will come out of these three measures that will correct an evil that every business man in this Commonwealth knows to be a grave evil. Every lawyer should support this, because it protects the jury system, and we lawyers know that the strongest safeguard of the American citizen and his property and person is the jury system, and we should do everything that we possibly can to strengthen and fortify it.

Mr. Dresser of Worcester: I am very certain that this committee must approve of the principle of unanimity, for I recall, if I may say so with propriety, the applause which welcomed the announcement a few days ago that one of our important committees had become unanimous, that any dissension that there was had been cured and that there was a unanimous report. That is advisable, because it settles questions, and every matter of unanimity is a matter of yielding and conciliation between discordant or differing views. That is perhaps one reason why every group of persons, directors, English courts or American courts, have acted by majority, while the jury during all these centuries has been unanimous. The jury is a common law form peculiar to England and other common law countries, and as the gentleman in this division (Mr. Gallagher) called to your attention a moment ago, when, in the time of Edward IV, it became unanimous, at that moment life and property and reputation began to be safe in England and safe for us, while on the continent they were still at the will of the powerful and remained so for centuries. That is why every one of us has been brought up in the belief, — we

do not know why, perhaps, — but in the belief that somehow our whole system and all our rights hang upon this jury system with its unanimous verdict. The only common law States that have changed that are some States like New Mexico and Idaho and Colorado. It is possible that they have discovered a new principle in the common law, but it may be doubted.

The learned gentleman in the fourth division in his remarks this morning brought to my mind more clearly than before that there is no demand for this change, — no real demand. From the wealth of his experience he must have known evils, if there were evils, and have considered remedies, if there were remedies. Yet if I rightly understood his remarks, he was considering the question this morning for the first time and then found in support simply the argument of antiquity.

I was one of the members of the Judiciary Committee, and tried to divorce my mind from the influence, the conservative influence, of history. It is an interesting question. The committee of the bar of which the gentleman from Boston (Mr. Sanford Bates) is a member sent out a questionnaire to every lawyer in the State and got no replies. Nevertheless it is an interesting question to consider. I, for one, and many of the members of our committee, took it as well as we could, as carefully as we could, as a new question, and there were two things that satisfied me that no change should be made. One is that the jury is not a selected body. Every other body that acts by majority is selected. The judges are appointed. The gentlemen here are elected. The directors are chosen. The jury is not selected, but goes forth as it is drawn by lot. The other point is that because of the requirement of unanimity, so well expressed in the instructions of the late Judge Hoar in the Tuey case, the minority argument must be heard and weight must be given to it. It is not always the right argument, but it is considered, and we know that the matter at issue will be settled.

I hope very much that the change expressed in any of the resolutions here will not be adopted by the committee.

Mr. McANARNEY: Twice during the course of this debate has *Commonwealth* v. *Tuey* been referred to. May I refer to it a third time and give you the law as finally declared in that case by Mr. Justice Bigelow, who rendered the opinion of the court?

> The jury room is, surely, no place for pride of opinion, or for espousing and maintaining, in the spirit of controversy, either side of a cause.

Do you gentlemen agree with that? [Reading]:

> The single object to be there effected is to arrive at a true verdict —

Does any man in this Convention doubt the truth of that statement? [Reading]:

> and this can only be done —

Mark you, how?

> and this can only be done by deliberation, mutual concession, and a due deference to the opinions of each other.

How otherwise, gentlemen, do you want a conclusion of fact to be arrived at? [Reading]:

By such means and such only, in a body where unanimity is required, can safe and just results be attained;

And now mark you, sir, these concluding words, because to my mind they are the last words upon this subject:

and without them, —

Without what?

without them, —

Without what?

Without "due deliberation, mutual concession, and a due deference to the opinions of each other."

and without them, the trial by jury, instead of being an essential aid in the administration of justice, would become a most effectual obstacle to it. [*Com.* v. *Tuey*, 8 Cush. 1, 4.]

There, sir, you have the opinion of our Supreme Judicial Court. Without that deliberation, concession and deference of opinion to which the court refers, trial by jury becomes an effectual obstacle to justice, and not an aid to it.

Mr. FRENCH: Now that the debate on this question has been prolonged for nearly the entire day, may I be permitted to quote a remark recently made in my hearing by a Justice of the Superior Court of this Commonwealth, a gentleman engaged in presiding at the trial of jury cases from about the first of September until about the first of June of each year? A jury having reported a disagreement, the judge remarked in their presence: "I believe this is the first disagreement in a civil case that I have received at the hands of a jury for at least two years."

Mr. MANSFIELD of Boston: I realize, Mr. Chairman, that the committee is weary after the discussion of this question for so long a time, and that the period is a heated one, and that all sides of this question have been gone into pretty fully; but I beg the indulgence of the committee for a few brief moments while I may be allowed to express my emphatic dissent in the most humble manner from the expressions voiced by my brothers in the legal profession of far higher standing than mine, of a vast deal more experience, of incomparably greater success than mine, and to say to you that it is my profound conviction that if this Constitution should be amended by the action taken it would be a matter of almost irreparable detriment to the good interest of this Commonwealth. It would not necessarily be fatal, Mr. Chairman; the Commonwealth has weathered and can weather many storms.

Matters of policy may be viewed in different lights by many people, but here is something which should be considered from the standpoint of logic and of fact. It does not satisfy me that members of this committee may say to me: "This is an old system, and anything new is preferable to it." If a matter is old, if it is sanctified and hallowed by time, if it has met the approval of countless generations of people, then I think that that goes to show that it is a well-established system of merit, approved by many generations. Something new is not necessarily something better.

I shall be bold enough to say that some gentlemen of this committee who have voiced their sentiments in behalf of this measure have at

least some slight trace of political feeling and ambition in the sentiments they have expressed. I think, Mr. Chairman, that no man in this Convention who knows me will venture to say that I have any sympathy in favor of corporations, either in court or out; and I venture to say further that no member of the committee will venture to say that I will be a party to any corruption sought or obtained from any jury or juryman; but I say this to you, that in my somewhat limited experience during my twenty years at the bar as compared with the vast experience of so many learned and able gentlemen, and during my observation as I have gone daily in and out of the Suffolk County court-house and some of the other court-houses around and about this Commonwealth, I have become deeply and unalterably imbued with the conviction that it is for the best interest of every litigant, plaintiff or defendant, person or corporation, that this existing system should not be disturbed or interfered with.

Before I was a lawyer I sat on a jury. I sat to the limit of thirty days as a member of a jury in the Suffolk County court-house while I was a student at the Boston University Law School. That brief experience gave me, I think, at least some slight insight into the working of that system. All jurymen are not impregnable. There may be corruption. They are not all gifted with an enlightened intelligence which will enable them without any doubt or possibility to determine the exact facts in a given case. I admit that freely. But I want to be as frank in stating to you, Mr. Chairman and gentlemen, as my brothers here have been in criticizing the jury system, and the corrupt members of the jury whom they say sometimes exist. I agree with them that it is not only the members of the jury; the presiding jurist sitting upon the bench, who decides questions of law and directs the jury in its deliberations and determination of questions of fact, is at least an equal factor in what is done in the court-room. I know, — and let us talk plainly to one another, — that there are judges and have been judges in our Superior Court in this Commonwealth who have been known, and described, and talked about and bruited about by men as high in standing at the bar as any gentleman who has spoken here to-day, who have been referred to, not only occasionally but commonly, as "corporation" judges, as men inclined to favor corporations, as men whose bias and whose leaning is toward the interests; and that word, which has been used here already so many times, is perfectly well understood.

I have observed, not once but time and time again, how such a Justice has dominated a jury. I recall, to give an illustration, one particular session in the Superior Court of Suffolk County where men drawn as all the other jurors were drawn sat there to decide the facts and attempt to arrive at justice. The presiding justice in that session by his charges to the jury, by his manner to the men who were drawn as jurors, so worked upon their feelings, so obtained their friendship and good will, that during the entire sitting of that jury in that court-room, during the entire thirty days that that jury sat there, every verdict brought in by them, and brought in with unanimity, brought in unanimously, was a verdict for a defendant corporation. I speak of that, Mr. Chairman, to attempt to make this point: That men drawn, however they may be, by lot or by choice or by any miscellaneous method, from the multitude of people in any given com-

munity in this State, are not necessarily biased in a certain direction, and that although you exclude one or two or three or some minority of their number from the operation of the law requiring an agreement, it does not necessarily mean that then they will sit free, impartial, honest, and uninfluenced within the meaning of our laws; and I fear, Mr. Chairman, that even then you would arrive at a result very far indeed removed from perfection.

I view this matter from a different point of view from that of some of my friends. They refer to the decisions by boards of directors, by committees, by other bodies, by the body politic itself in electing candidates to office, and I think that in my mind I can make this distinction: That in such decisions, men give vent to an expression of their opinions and desires and say what they want to have done. In the jury room, when twelve men are shut in there free from any word or influence of any other member of the community, they sit there not to say that they would like or would desire to have some plaintiff obtain some money from a defendant, but they sit there for the sole purpose of deciding facts, of saying what the truth is, and not to express their opinion, or their will, or their wish.

Mr. Chairman, my personal experience when I served as a juryman, my observation since then while I have been taking such activities as I could as a member of the bar, has been this: That sometimes the one man of the twelve who sat to listen to a case supplied the very thing which leavened the whole loaf and which inclined and finally succeeded in obtaining a jury to realize and to consider all points of view and to arrive finally at a better decision than they would if that man were disregarded. What would happen were you to authorize the Legislature to pass a majority law, and the Legislature then did so? Simply this: Twelve men would walk into a jury room. They would sit down. They would vote at once. Two or three among them would vote in the minority; the others as a majority would agree. Perhaps among that minority might be the most honest, the most disinterested, the most learned, the most experienced and the most sympathetic with the people, and with the corporations, and with all parties involved, who are sitting upon that jury. In the minority might be one man or two men or three men who might have the pluck, the backbone and the audacity to defy the judge sitting in the court-room, who had purposely and intentionally sought to sway the minds of that jury and to induce them to reach a conclusion which he favored. There might be in that minority, sitting in that jury, one man or two men or three men who, with sufficient force, with sufficient persuasion, with sufficient ability, might explain to their colleagues on that jury their view of the situation, so as to convert them. That has been done, Mr. Chairman and gentlemen, far more times than any of my learned friends here, lawyers of great ability, have had juries disagree on cases which they have tried before them. The one man or the two men or the three men have done far more to obtain justice for the poor man they speak of, they have done far more to prevent gross injustice to every party in a case, than in my humble opinion could be attained by giving a majority or any number less than the whole of a jury the power to decide a question. To pass such a measure, to embody it in the Constitution, to institute it in legislation, would mean simply that when a jury considered a case they would give

it simply snap and immature judgment, and not a mature deliberation. I hope, Mr. Chairman and gentlemen of the committee, that this measure will be defeated.

The amendments moved by Mr. Dutch of Winchester were rejected and the resolution, No. 49, was rejected.

The Convention, sitting as a Committee of the Whole, then took under consideration the following resolution (No. 203), bearing on the same subject, presented by Mr. Sanford Bates of Boston:

Resolved, That it is expedient to amend the Constitution by the adoption of the following: —

ARTICLE OF AMENDMENT.

In all civil actions which shall be tried by a jury in this Commonwealth, after twelve hours' deliberation, the agreement of five-sixths of any jury therein shall constitute a sufficient, true and valid verdict. The deliberation of the jury shall be deemed to have commenced when the officer has conducted the jury to their consultation room and the clerk in charge of the session shall enter such time in his records.

Where the verdict is agreed to by all the jurors the foreman only shall sign the verdict; when less than the full number agree on the verdict the same shall be signed by all the jurors who concur therein and the clerk of said court shall enter on his minutes the number of said jurors concurring in such verdict.

Mr. Bates moved that the resolution be amended by the substitution of the following new draft:

Resolved, That it is expedient to amend the Constitution by the adoption of the following: —

ARTICLE OF AMENDMENT.

The Legislature may provide that in all civil actions which shall be tried by a jury in this Commonwealth after twelve hours' deliberation the agreement of five-sixths of any jury therein shall constitute a sufficient, true and valid verdict.

The amendment was rejected, by a vote of 30 to 150. The original resolution also was rejected.

Mr. John C. Twomey of Lawrence presented the following resolution (No. 205), bearing upon the same subject:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The verdict of a jury in any civil action or proceeding shall be a final determination therein, and no verdict shall be set aside on the ground that it is against the weight of evidence, nor shall the damages awarded be reduced on the ground that they are excessive, but after motion filed, the court may recommit the cause to the jury for further deliberation.

The committee on the Judiciary reported that the resolution ought NOT to be adopted and this report was considered by the Convention July 27, 1917.

The resolution was rejected the same day.

THE DEBATE.

Mr. TWOMEY of Lawrence: Well realizing the temper of the members of this Convention upon these matters relating to jury trials, I do not plan to say a great deal with reference to this particular measure, but still I think something ought to be said, so that if the attitude of this Convention that we should retain a majority verdict in civil cases is to prevail, we ought to do so with an express understanding

whether or not a proposition such as is submitted here ought to be attached to the decision to retain majority verdicts. This proposition simply recites that, once a jury has returned a verdict, it shall not be set aside on either of the two specified grounds, that the verdict is against the weight of the evidence or that the damages are excessive. I well realize that at times juries may go astray on either of those two questions, and I am not attempting by my proposition to make it possible to change the improper verdict of a jury. I have put in there a safeguard, that if either party is dissatisfied with the verdict of a jury, upon motion filed a presiding judge may recommit the question, either as to damages or as to the verdict with reference to the weight of the evidence, — recommit it to the jury for further consideration; but if that jury after further deliberation is still of the same opinion, or alters its opinion upon the matter, then that determination is to be a final one. Not that our Supreme Judicial Court is not to have the power to take recognition of exceptions or miscarriages with reference to the application of the law; but if there is any merit in our jury system, so ably defended here yesterday, if there is any merit in unanimous jury verdicts, I trust that this Convention will not be so inconsistent as to say that once we have unanimity in jury verdicts, some one individual, or some small group of individuals, whether it is one judge of the Superior Court or four Justices of the Supreme Judicial Court, can set aside that unanimity which we voted so strongly on yesterday.

I submit that, with reference to the question of the weight of evidence, all that the Supreme Judicial Court has before it is the record, where, in the testimony, what may have been recorded "No," an intelligent jury, seeing the expression of the person, noting his conduct and his general demeanor upon the witness stand, may often translate into a "Yes." So that I say the record of the case, being nothing but the printed words, is not a fair criterion by which a court may set aside the verdict of a jury on the ground that it is against the weight of the evidence.

In reference to the other aspect of the question, the matter of damages, if a jury, especially in actions for personal injuries, sees the victim, sees his incapacity, sees the physical wreck that is left, are we, — who believe so strongly in jury verdicts, in their integrity, in their absolute safeguards for the rights of parties, — are we going to allow some other tribunal, which does not see the physical being, which does not see the injuries inflicted, but rather sees a paper recital of the injuries, to attempt then to define with mathematical accuracy what is the true measure of damages?

I submit, gentlemen, that if our jury system is all that its advocates pronounce it, if it is the most successful system that centuries of experience and centuries of judicial thought can find, then I trust that this Convention will not record itself in such an inconsistent manner as to say, once we have a verdict of the jury, that some other person or group of persons is greater than that jury.

Right to Trial by Jury.

Article XV of Part the First of the Constitution is as follows:

ART. XV. In all controversies concerning property, and in all suits between two or more persons, except in cases in which it has heretofore been otherways used and practiced, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the Legislature shall hereafter find it necessary to alter it.

Mr. John C. Twomey of Lawrence presented the following resolution (No. 208):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The right to trial by jury shall be inviolate, and shall extend to all cases at law, but a jury trial may be waived in all cases by the parties after the right of action has accrued, and in any civil action or proceeding the agreement of five-sixths of any jury after five hours deliberation shall be a sufficient verdict therein.

The committee on the Judiciary reported that the resolution ought NOT to be adopted.

It was considered by the Committee of the Whole Thursday, July 26, 1917, and was rejected by the Convention the next day.

THE DEBATE.

Mr. TWOMEY of Lawrence: This resolution, No. 208, states that the right to trial by jury shall be inviolate and shall extend to all cases at law, but that a jury trial may be waived in all cases by the parties after the right of action has accrued. I shall be brief, but I do want to say that I have dispelled from my mind all doubts that majority verdicts by juries are wise. I am convinced in view of the discussion and the vote of the Committee of the Whole that nothing less than a unanimous verdict of twelve men is for the good and welfare of the people in this Commonwealth. But I appeal to those who have so ably advocated unanimity of jury verdicts, to those who have voted for the proposition, that they now give us a jury trial in all cases. If there is merit in a jury trial, if it is as good as they tell us it is, then I ask them to give to that humble litigant, to that person who may have his property taken away from him without due consideration, what he should have, — a jury trial. I ask them now to go on record in this same meeting of the Committee of the Whole as wanting those litigants, humble and poor, to get what they say is good for them, a jury trial.

Mr. MCANARNEY of Quincy: Will the gentleman specify in what actions at law in our higher courts parties to a case are not entitled to trial by jury if seasonably claimed?

Mr. TWOMEY: In answer to the question, I would say that that result has been achieved practically in the matter of workmen's compensation.

Continuing, Mr. Chairman, I would add that I shall be exceedingly distressed if those who have defended and voted for jury trial with unanimous verdicts now say to us: "Oh, no, a jury trial is not as good as

we would have you believe, it is only good in some cases." I say that it is my belief that if a jury trial is good for a litigant in one case it ought to be good enough in all cases.

Mr. Francis P. McKeon of Worcester presented the following resolution (No. 151):

Resolved, That it is expedient to amend the Constitution by adopting the subjoined

ARTICLE OF AMENDMENT.

That Article XV of the Declaration of Rights be amended by the substitution of the following: —

Art. XV. In all controversies concerning property, and in all suits between two or more persons, the parties have a right to a trial by jury; and this method of procedure shall be held sacred, unless, in causes arising on the high seas, and such as relate to mariners' wages, the General Court shall hereafter find it necessary to alter it.

The committee on Bill of Rights reported that the resolution ought NOT to be adopted.

By agreement, the subject was acted upon adversely by the Committee of the Whole, July 26, 1917, and was considered by the Convention the following day, and rejected.

THE DEBATE.

Mr. McKeon of Worcester: Mr. President, if you please, I should like to explain before this question is taken the exact issue which I intend to raise now under an amendment which I shall offer if this resolution is not rejected. I think it is a proposal that will meet with very decided approval upon the part of the lawyers of this body. The question which it raises, briefly, simply and plainly stated, is this: That wherever in 1780, at the adoption of the Constitution, and wherever now we have a right to a trial by jury, that in like cases, trying the same questions, determining the same facts, we shall preserve and extend that right of trial by jury to causes in equity. That is the sole question raised by this amendment, which narrows down to a very large extent my original proposal. Therefore I would ask that I may have opportunity to present a brief statement in support of extending the right of trial by jury in equity to those causes wherein that court has concurrent jurisdiction now with the courts of common law, so that we may have a harmonious and complete system of procedure in all those cases where we believe that controverted facts ought to be tried by the jury, as the best tribunal which we have.

VIII.

ABOLITION OF CAPITAL PUNISHMENT.

Mr. John D. W. Bodfish of Barnstable presented the following resolution (No. 31):

Resolved, That the following amendment to the Constitution be submitted to the people for their adoption or rejection: —

Whereas it is universally recognized that no person has a right to take the life of another except in the extreme necessity of self-defence, and whereas the same principle ought to be recognized in the conduct of the body politic, it is, therefore, hereby ordained that no court of law within this Commonwealth shall hereafter impose the penalty of death for the punishment of any crime.

The committee on the Judiciary reported that the resolution ought NOT to be adopted. It was considered by the Convention, sitting as a Committee of the Whole, Tuesday, July 31, 1917, and was rejected the next day.

THE DEBATE.

Mr. Bodfish of Barnstable: I rise with some distrust of my ability to present this matter as it ought to be presented to you. I do not know what support I may expect from other members of the Convention, for I have had no time to lobby in the interest of the passing of this resolution. Notwithstanding my distrust of my ability to present it as it should be presented, I am impelled to undertake it because of the teachings of my parents from my youth up, and because of the example of Lincoln, the greatest son of America, who acknowledged that his courage and power to bear such burdens as none of us ever has been called upon to bear, were derived from his reliance upon the great Author of the universe, and I now rely upon that same destiny which shapes our ends, to see to it that the truth which I may speak carries with it the conviction that it ought to carry, in spite of the poor words in which I may convey it.

I know my limitations. I shall attempt no flights of oratory. I shall leave brilliant speech to those among us who are justly reputed to be masters of it. I am well aware of the task I am undertaking. The committee on the Judiciary has reported that this resolution ought not to pass, and you will be reminded that that report is unanimous. But I think some members of that committee will have the grace to admit that in the press of other matters they did not give this matter as much attention as they would have liked to give it. I think all the members of that committee will admit that they did not have before them the data compiled by the commission for the use of this Convention at the time they heard this question and made their report.

But if it is still urged that this committee ought to follow the action of that committee because that report was unanimous, I ask you what, then, is the function of this committee? We might as well let every matter go directly to the Convention. And I also answer, with full deference to the membership of that committee, to their ability and to their honesty, and especially to the ability and honesty of their venerable chairman, that it is a habit of mind of the legal fraternity

and of judges to look always backward for precedent rather than forward for some opportunity for improvement.

Another reason why we should not accept the report of that committee is because it is based on the erroneous assumption that this is legislative matter and not a matter for constitutional amendment. This raises an issue which is fundamental to everything which we shall do here in this Convention, and we will do well at this point to give this issue brief consideration.

Let me say at once that I am not of those who look upon the Constitutional Convention as having been called for the purpose of writing into the body of the fundamental law those matters of legislative importance only which have failed to get by the General Court. Neither am I of those who believe that the present Constitution is entirely outworn. The age of that Constitution proves that it has for its foundation principles essentially true and sound, but its very age also indicates that it may need repairs, that it may need to be changed, so that it may fit present conditions.

But let us examine, if we can, the question of what is properly legislative matter and what is proper matter for amendment to the Constitution. Ex-President Eliot of Harvard has included in his list of the greatest State papers of this country the decision written by Chief Justice John Marshall in *M'Culloch* v. *The State of Maryland*, which you will find in 4 Wheaton, 316 at p. 407. In that decision Chief Justice Marshall says:

> A Constitution, to contain an accurate detail of all the subdivisions of which its great powers will admit, and of all the means by which they may be carried into execution, would partake of a prolixity of a legal code, and could scarcely be embraced by the human mind. It would probably never be understood by the public. Its nature, therefore, requires that only its great outlines should be marked, its important objects designated, and the minor ingredients which compose those objects be deduced from the nature of the objects themselves.

There is perhaps no better illustration of what Chief Justice Marshall meant, with the possible exception of the Federal Constitution, than the present Constitution of Massachusetts. Keeping these matters in mind let us look for a moment at the character of the resolution before us. I know full well that the text of that resolution is not perhaps the best. It was drawn hastily, but I was satisfied from those who know more about such matters than I do that it was broad enough to cover the purpose I had in mind. I am perfectly willing to have any changes in phraseology made.

But let us look at the subject-matter of that resolution. It deals with the question of capital punishment. That deals primarily with the right to life. Let us see if the right to life is a matter which has been treated constitutionally. We read in the very Preamble of our Massachusetts Constitution that one of the first ends of government is to furnish to the individuals who compose it the power of enjoying their natural rights and the blessing of life. We read in the first Article of the Declaration of Rights that all are born free and equal, that they have certain natural, essential and unalienable rights, that among these may be reckoned the right of enjoying and defending life and liberty; and all through the Constitution we deal with the question of life and the conditions under which it may be interfered with.

So the subject-matter of the resolution and the subject-matter of the Massachusetts Constitution are in harmony, and the resolution therefore falls within the definition as laid down by Chief Justice John Marshall, and therefore the basis of the report of the committee on the Judiciary is not sound.

This brings us to a consideration of the main question, the advisability of the retention or the abolition of the penalty of death as a punishment for crime. I hold no brief for murderers. I urge only what I believe to be for the common good, — the protection, safety, prosperity and happiness of all the people. For ages humanity has been struggling upwards from its rude beginnings, where of necessity it obeyed the law of the jungle, the club and the fang, — an eye for an eye, a tooth for a tooth, a limb for a limb, and a life for a life. Little by little the light of reason has dawned upon the race, until finally we have come to the point where revenge and retaliation have given place to reason. The old question, "Am I my brother's keeper," we now answer in the affirmative, but in practice how fearfully short we fall of doing what that answer implies.

Probably in no department of human life has there been a greater transformation than in that of the relation between society and its criminal classes. Scarcely more than a century ago over two hundred offences were punished by our English ancestors with the penalty of death, inflicted with varying degrees of cruelty and horror. Now we have reached that more human stage where in Massachusetts we inflict the penalty of death for the single crime of murder in the first degree only, and that is hedged about in many ways. We allow provocation, drunkenness, insanity, to be pleaded in defence, and we take advantage of every extenuating circumstance to save the accused person. If there is any department in our legal administration which justifies the charge that there is one law for the rich and another for the poor, it is to be found in the cases of those accused of capital offences. The man who cannot afford to pay great alienists may be as seriously affected in his mind as the man who can, and if we are going to give the benefit of the doubt to one we should give it to the other. For it should be noted that we no longer punish for the protection of society. If we did we should kill them all, — the provoked as well as the deliberate, the drunk as well as the sober, the insane as well as the sane. But who would stand for such a system as that? No, we must preserve the insane criminal even at the risk of his keeper and of society. So I say we no longer punish for the protection of society.

The only argument which is left for those who believe in the retention of this relic of the rude justice of a more barbarous age is the argument that it deters others from committing the like offence. This, you will find, is one of the four determining questions which the commission for compiling data for the use of this Convention says should determine our attitude on this subject. You will find those four questions on page 13 of document No. 25. This is the first: Does it deter others? The evidence which you will find in that same document, and which you can find elsewhere, is overwhelmingly in favor of my resolution.

If you will read carefully the statistics of those States and those nations which have abolished capital punishment, the statistics of the Federal Bureau of the Census, and the tables on page 31 of document

No. 25, you will reach the same conclusion. I will not deal with the foreign nations, for, as the veteran from the fifth ward (Mr. Lomasney) would remind us, we are living in Massachusetts; but I will deal briefly with the other States of this Union.

Michigan abolished capital punishment in 1846, and nothing could induce her to return. Wisconsin abolished it in 1853; and in this report, document No. 25, you will find that the Governor of Illinois, comparing Illinois with Wisconsin, compared it greatly to the advantage of Wisconsin and deplored the fact that Illinois did not do likewise. Rhode Island abolished capital punishment in 1852. Maine, the last time, in 1887. And among the other States that have abolished it you will find Washington, Kansas, Minnesota, Oregon, North and South Dakota and Arizona.

The statistics of the Federal Bureau of the Census, covering a period from 1900 to 1910, and covering States where capital punishment has been abolished as well as those where it has been retained, show that the crime of murder has decreased in all of these States, almost without exception, and without reference to the punishment for that crime.

This alone should be sufficient to prove to us that capital punishment is not a deterrent of crime. But look at the tables on page 31. You will find, if you will look at least at the New England States, for they are nearest home, that in Maine and Rhode Island, in both of which capital punishment has been abolished for many years, there was a marked decrease of crime between 1904 and 1910. You will find that in Massachusetts and New Hampshire, both of which have capital punishment, there was a like decrease in crime. You will find in Connecticut, where capital punishment has been in force from the beginning, that there has been no change, and that Connecticut has a remarkably high rate per hundred thousand. You will find in Vermont, where capital punishment was in force, an increase, a marked increase, almost double, in that short period of time. And then, if you wish to look a little further, if you look at Michigan and Wisconsin, States in which it has been abolished the longest, you will find there a marked decrease.

It is worthy of note that the crime of lynching does not occur in those States which do not have the death penalty. That crime occurs alone in States where the State sets the example of taking human life because a life has been taken. And if you will stop to consider just a moment I think it will appall you, as it does me, to know of the hundreds of thousands, if not millions, of murderers who are at large in this country, unrestrained and unaccused, for every member of a mob that commits lynching is within the definition of murderer.

Oregon abolished capital punishment by constitutional amendment. The Ohio Constitutional Convention recommended that it be abolished by constitutional amendment, and recommended an amendment to the people, which was defeated. A committee of the New York Constitutional Convention recommended that the death penalty be abolished by constitutional amendment there. The members of the New York Bar Association recommended to the New York Constitutional Convention that the rigors of capital punishment should be modified, because, they urged, the rigors of the present system impel juries not to inflict the penalty if they can avoid it; and many times men

are found guilty of minor offences, or not guilty, because of the reluctance of juries to inflict the penalty of death. The New York Bar Association further say, in support of their recommendation, that speedier and less expensive trials could be had if the rigors of the penalty were modified, and that a greater certainty of conviction would obtain.

On this point it may be well for us to consider one or two facts. In England, in a recent year, it was ascertained that of those accused of homicide, 76 per cent of those cases in which capital punishment was not inflicted were convicted as against 33 per cent of those in which capital punishment was the sentence. A comparison of Connecticut, Massachusetts and Rhode Island, covering a long period of years, shows that in Connecticut only 13 per cent of those accused of the crime of murder are convicted; 87 per cent of the crimes of murder in Connecticut go unpunished. In Massachusetts 17 per cent are convicted and 83 per cent of the murders in the Commonwealth of Massachusetts go unpunished. In Rhode Island, on the other hand, where the penalty of death was abolished in 1852, 63 per cent of those accused of murder are convicted. When you consider, in addition, that in Rhode Island they get speedier and less expensive trials, is it any wonder that the committee for revising criminal law in Rhode Island, as late as 1913, said that they saw no reason for reinstating the death penalty; and you will find the report of that committee on page 11, I think, of document No. 25.

If it is urged that the infliction of death deters those who commit murder in cold blood as paid assassins, like the New York gunmen, for example, — and it should be noted that the infliction of the penalty of death in New York did not deter them, — but if it does deter such as they, their number is offset many times over by those weak, morbid, unbalanced minds which need only the example of a State execution to prompt them to the shedding of innocent blood.

Of 167 condemned men inquired of in New England before their execution, 164 had witnessed public executions. The Tucker trial of Middlesex County was followed by the commission of many crimes of the same kind, and 19 men were awaiting trial for murder in the jails of that county at one time shortly after his conviction and execution. Can you argue that this was mere coincidence?

If it still is urged that we should retain the death penalty, then I ask you upon whom should the State inflict this punishment? You must answer, upon the guilty and upon the guilty alone. But it so happens that many times innocent men have been convicted. Phillips, the great English authority on evidence, cites twenty-nine cases where the death penalty was inflicted and innocence was afterward established. In Michigan, since the abolition of capital punishment in 1846, nine of those convicted of murder have been proven to be innocent. And I could cite to you other cases, in other States, in the east as well as in the west, and in our New England States, where innocent men have been convicted of this crime.

Just think what it means! If an innocent man is convicted, and if your electrocutor sends a charge of lightning through his body and reduces him to inanimate clay, there is no power under heaven by which you can rectify the wrong you have done.

But I do not need to argue to you the fallibility of human judg-

ment. You know that judges and jurors are human and are liable to err. You know that it is the fundamental object of government to secure to every man, as the gentleman from Randolph (Mr. French) so well said the other day, the utmost protection of life. I think he went so far as to say that the Constitution is not worth the paper it is written upon unless it does guarantee to the fullest extent the right to life, reputation, liberty and property.

Those who oppose the abolition of capital punishment sometimes do so on the ground that the Governor abuses the power of pardon. I submit to you that that does not meet the issue. It raises another issue. Your quarrel is with Article VIII of the Declaration of Rights, in which the Governor is given the power to pardon. I, however, have no objection, if those of you who otherwise would favor this measure wish it, to so amend my resolution that it will cover that objection; for I do not believe that a man convicted of murder should escape punishment by the interference of the executive with the proper administration of law.

Neither do they meet the issue who urge that the accused man brings upon himself his own punishment, and that the Bible sanctions the taking of human life. I would remind you who may say "Whoso sheddeth man's blood, by man shall his blood be shed," that according to the more enlightened dispensation of the later version, we find the contrary rule laid down. We find these words spoken of a woman taken in the very act of committing the highest crime known to the Jews: "Go thy way and sin no more." And to her accusers "Let him that is without sin cast the first stone." And who is there among us without sin? If it be true that to look upon a woman to lust after her is adultery, who is there among us who has not committed every crime in the calendar in his heart? It is only by the grace of God, or by the more fortunate circumstance of our birth and our environment, that we have not committed the overt act which by the narrow limits of our finite minds we call the crime.

But let us look for a moment at the history of this movement in Massachusetts. From 1835 this question has been considered here. From Edward Everett down to the present executive, including Governor Morton and Governor Long, we have recommendations that this rude relic of barbarism should be put away. We find Attorneys-General, from Austin to Knowlton, urging that the time has come when we should put away this last relic of a rude justice; and we find that the Legislature has dealt with the subject many times, but that it never has been submitted to the people. Attorney-General Knowlton said in 1901, — and you will find the record of his report in this document No. 25, — that the penalty of death no longer should be inflicted in this Commonwealth, since it does not diminish or prevent crime. He based what he said upon a wider experience, probably, than any other man in the Commonwealth ever has had, and upon a close study of the working of this law in this and other States. He said that it did not diminish or prevent crime; that a man so lost to reason that he would commit murder deliberately, premeditatedly, with malice aforethought, does not enter into a discussion with himself as to the consequences of his crime. He said that the time had come to put away this relic of barbarism, — and those are

his very words, — for society sooner or later must outgrow this rude system as it has outgrown the rack, the whipping-post and the stake.

With such antecedents before us, is it not time for Massachusetts, the pioneer in constitutional democracy, the State where we have always maintained the fires of liberty and progress, where we have not been content to live in the reflected glory of the past, but have been constantly flashing lights into the future, — is it not time, I say, to finally, once for all, put away this last vestige of such barbarity? How can we be worthy of such sires as ours if we are not willing to face the future, if we must ever look to the past? How can we honor them better than by building, upon the foundations they have laid so well, a superstructure as perfect as we can make it? How can we honor them better, or insure to ourselves the gratitude of posterity more certainly, than by writing a little better than our fathers did the truth they wrote so well? When justice and mercy both point to the same conclusion as irresistibly as they do in this case, how can any of us yield to our prejudices and refuse to adopt the same conclusion, and then have the courage to face our conscience or our God?

So, Mr. Chairman, I move that the Committee of the Whole recommend to the Convention that this resolution ought to pass, and I think that I have given you sufficient evidence, no matter what your individual opinions may be, that there is a sufficiently important question of fact here to warrant us in submitting it to the people, who never yet have had a chance to pass upon it, and whose right it is in the last analysis to determine under what laws they will live. I thank you. [Applause.]

Mr. Williams of Brookline: I do not propose to discuss the merits of the question of the abolition of capital punishment, because in my opinion, and in the opinion of the other members of the Judiciary Committee, this Committee of the Whole and this Convention is not the place. Furthermore, it would not be fair to certain members of the Judiciary Committee for me to argue against the abolition of capital punishment (the opinion, by the way, which I entertain) because at least two, and possibly more, of the membership of that committee believe that capital punishment should be abolished. But they do not believe, nor do any of the members of the Judiciary Committee believe, that it should be made a subject of amendment to the Constitution. We believe that it is distinctively a legislative proposition. And why?

In the first place, the only place in which the subject of capital punishment is referred to in the Constitution, in my opinion, is the last clause of Article XII of the Bill of Rights, where it says:

> And the Legislature shall not make any law that shall subject any person to a capital or infamous punishment, excepting for the government of the army and navy, without trial by jury.

Clearly it was the opinion of the framers of the original Constitution that it is a matter for the Legislature to provide punishment to fit the crime.

Article IV, Chapter 1, of Part 2 of the Constitution provides:

> And further, full power and authority are hereby given and granted to the said General Court, from time to time to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instruc-

tions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof.

Under Article III of the same chapter, the General Court is given

. . . full power and authority to erect and constitute judicatories and courts of record, or other courts, to be held in the name of the Commonwealth, for the hearing, trying and determining of all manner of crimes, offences, pleas, processes, etc.

In a word, those articles and provisions of the Constitution determined the members of the Judiciary Committee in reporting against a provision for an amendment to the Constitution as suggested by the gentleman from Barnstable. It always has been a matter of legislative determination. We feel that the words of his Excellency the Governor, in addressing this Constitutional Convention on the first day, should have weight with this Convention in determining its action, — whether the Constitution shall be made a bundle of statutes, or whether it shall remain

. . . a declaration of fundamental individual rights accompanied by an outline of a frame of government through which organized society may perform its work.

I am reading from the words of his Excellency the Governor on the first day we assembled.

In our day, social and economic conditions change with great rapidity and statutes may be required which would soon become obsolete and outgrown. But if the Constitution, — the fundamental law of the Commonwealth, — is made to partake of the nature of a statute, if it shall attempt to specify in detail the rules which should govern the ordinary relations of men to each other and to the State, it cannot hope to have a high degree of permanence. In the period which has elapsed since the Constitutional Convention last sat in this Commonwealth, some of our States have had as many as four such bodies. Those States are not more unstable or prone to change than is our own, but having placed in their Constitutions matter statutory in its nature, they have been obliged to treat it as a statute and resort to frequent revision. It has been the good fortune of Massachusetts thus far to avoid this error. May this Convention preserve her in that happy condition.

Since this Convention assembled the Chief Justice of this Commonwealth, in an opinion published in the Banker & Tradesman of July 7, referring to the Constitution said:

The Constitution of Massachusetts is a frame of government for a sovereign power. It was designed by its framers and accepted by the people as an enduring instrument, so comprehensive and general in its terms that a free, intelligent and moral body of citizens might govern themselves under its beneficent provisions through radical changes in social, economic and industrial conditions.

Note this:

It declares only fundamental principles as to the form of government and the mode in which it shall be exercised. Certain great powers are conferred and some limitations as to their exercise are established. . . . It is a grant from the sovereign people and not the exercise of a delegated power. It is a statement of general principles and not a specification of details.

That is the opinion of our court, delivered within six weeks; hence your Judiciary Committee feel that this body should not incorporate into the Constitution a statute, as it would by taking the proposed action. The experience of some of the States which have abolished capital punishment has been such that they have gone back and adopted it again, and it is possible to conceive of a change of opinion in this Commonwealth as time progresses.

Now, as I understand, the only reason suggested by the gentleman from Barnstable (Mr. Bodfish) is that the right to life is an inalienable right, and he quoted from Article I of the Bill of Rights:

All men are born free and equal, and have certain natural, essential, and unalienable rights; among which may be reckoned the right of enjoying and defending their lives and liberties; that of acquiring, possessing and protecting property; in fine, that of seeking and obtaining their safety and happiness.

The Bill of Rights goes a little further. Article X says:

Each individual of the society has a right to be protected by it in the enjoyment of his life, liberty, and property, according to standing laws. He is obliged, consequently, to contribute his share to the expense of this protection; to give his personal service, or an equivalent, when necessary.

The point I desire to make is that while the right to life and liberty is inalienable, yet it does not give a free license for a man to act as he pleases. He is bound to observe the laws, he may be required to give up his life in defence of his country for the protection which is accorded him. We see that from day to day, in what is going on in connection with the present war. He is obliged to submit to taxation in order to have his property protected. He is not permitted to go wild, not permitted to commit crime and not suffer punishment. He possibly may have his liberty taken away from him by incarceration in jail. The decisions are innumerable as to what a man cannot do in connection with that right to life and liberty.

The condensation of the idea of what I have said is expressed by Chief Justice Rugg, in *Commonwealth* v. *Libbey*, 216 Mass. 356:

But the Constitution also guarantees to all citizens the blessings of liberty and the right to happiness and safety, and the right to acquire and possess property. In general terms also the Federal Constitution gives substantially the same assurances. The liberty which thus has such ample constitutional security does not signify absolute and unrestrained license to follow the dictates of an unbridled will. Constitutional freedom means a liberty regulated by law.

That is the inalienable right which you have.

The right of the individual is subject to reasonable restraints made by general law for the common good.

Then follows a quotation from an opinion of the Federal Court:

Liberty implies the absence of arbitrary restraint, not immunity from reasonable regulations and prohibitions imposed in the interests of the community.

So it seems to me that the argument of the gentleman from Barnstable (Mr. Bodfish) that the right to life is inalienable is not sound, and that we should adhere to the suggestion already made in this Convention and in this committee, which was made to us by His Excellency, not to incorporate into the Constitution statutory law. If we do, we shall soon have our Constitution nothing but a compilation of statutes, rather than a declaration of those fundamental individual rights, as laid down in the present Constitution. We of the Judiciary Committee think it is well to adhere to the original plan.

Mr. ANDERSON of Newton: After the argument of the last speaker, with which I agree, I hesitate a little to say anything. I have long been in favor of capital punishment, but it took an experience to make me a sincere believer in it. Some years ago I was asked by a certain condemned murderer in this State to come and see him and talk with him, and in that experience I learned a great deal. I asked

myself, first of all, how can I know that this man has repented? He was very sorry of course, exceedingly sorry, that he was in the position in which he found himself. He was exceedingly sorry that he had been so foolish as to commit the crime, and, of course, he was full of professions as to what he might do if he were released.

But, as it seemed to me, professions of willingness to enter upon a life of service if he were pardoned had a somewhat hollow sound, coming from a man, who, so far as I could see, never had done an unselfish deed in all his life. Of course there was fear in him too, for he believed in God, and he felt he might soon stand before Him, but that fear was no evidence of repentance.

After consultation with some of those whose wisdom I especially prized, I came to the conclusion that the only possible proof of repentance which he could give me was a deed, an atoning deed, which would go below the surface, which should mean everything to him.

I soon found, however, that I had not yet looked at the deeper side of the problem; that the deeper question was: How can this man prove to himself that he is repentant? Sorrow and professions and fear of course would amount to nothing more with him than they would with me, and there was nothing left for him, if he wished to prove his repentance to himself, except an atoning deed, a deed which would reconcile him in his deepest nature and in his own mind to the law of right, written as it is on conscience, so that he could hold up his head before all the universe and say: "I have repented of my crime, and I know that I have repented of my crime because I have made willingly the supreme expiation."

Now, it seems to me that that is the only attitude that a right-minded murderer can possibly take. But my murderer had no such ideas at all. I learned from him that he never would have committed the murder if he ever had supposed he would be found out; he never would have committed the murder if he ever had supposed that they would electrocute him, — *him*. His whole mind was set with tremendous desire upon a commutation of his sentence; and he was asking me if I would find out for him what was the average time commuted murderers had to spend in prison before they were pardoned, and his only use for me was that I might intercede for him with the powers that be to secure him a commutation.

The other night, I was talking with my father, a man of the largest experience of life, and he told me that in his early days he was the spiritual adviser of a murderer in the city of St. Louis, who killed his wife by drowning her in the Mississippi River. This man had lived in a good home when he was a boy, and after the murder had been committed and he had been tried and sentenced, it seemed that his better manhood came back to him. The father of this murderer was extremely bitter at the court for being satisfied with nothing except his son's life; but the murderer, on the other hand, again and again expressed the thought that he never could be satisfied except with his execution.

That reminded me that when I was eighteen years old, in Chicago, they apprehended a murderer, a man of kind disposition but a regular demon when he was inflamed with drink. He had lost his wife and was living with a little daughter of about twelve years of age, whom he greatly loved. He came home one night drunk, and, under circum-

stances which made it first degree murder, he murdered her. When he came to himself and saw what he had done, he was deeply repentant. He pleaded guilty of murder in the first degree before the judge. The judge rightly ordered a trial, the verdict was first degree murder, and the judge sentenced him. When he was asked what he had to say against being sentenced, he made a very remarkable speech, in which he said he never could be satisfied with anything else than giving his life for the life that he had taken.

Now, one of the great reasons for this agitation for the abolition of capital punishment is the doctrine which Jesus Christ put forth, in a world which cared nothing for it at the time, but which the world has since accepted within the bounds of Christendom, the doctrine of the immense value of the single human life. Now, those who favor the abolition of capital punishment, with what seems to me a superficial sentimentality, think only of the life of the murderer, but the State must take the view that the life in question is the life of the victim; and just because the State now holds to the thought of Jesus Christ about the immense value of every single human life, it must say that the life which the murderer takes cannot be compensated for by something cheap, it cannot be compensated for with so much money, it cannot be compensated for with a few years in prison, it cannot be compensated for even with life imprisonment. There is only one thing so valuable, so valuable above all else, as will expiate the taking of life, and that is a life itself. I do not believe that capital punishment is a survival of barbarism. I believe that through all of the ages up to the present time, and at the present time, capital punishment is kept upon our books because it is the demand of justice, — a justice which not only the fundamental nature of man demands, but which every right-minded murderer approves. [Applause.]

IX.

ORGANIZATION OF THE COURTS.

Mr. Charles P. Curtis, Jr., of Boston presented the following resolution (No. 188):

Resolved, That it is expedient to add to Chapter III of the Constitution of the Commonwealth, the following

ARTICLE OF AMENDMENT.

The Supreme Judicial Court shall have the power to prescribe, from time to time, and in any manner, the form and manner of service of writs and all other process; the mode and manner of framing and filing proceedings and pleadings; of giving notice and serving process of all kinds; of taking and obtaining evidence; drawing up, entering, and enrolling orders; and generally to regulate and prescribe by rule the forms for the entire pleading, practice and procedure to be used in all actions, motions and proceedings at law of whatever nature by the several courts of record of the Commonwealth.

The committee on Judicial Procedure reported, July 16, 1917, the following new draft (No. 313):

Resolved, That it is expedient that the Constitution be amended by adding thereto the following

ARTICLE OF AMENDMENT.

To the end that the distribution and exercise of the judicial power by and among the several courts may be so coördinated and systematized as to correct defects and promote efficiency, economy and dispatch in judicial procedure, the Legislature may provide for the distribution of the judicial power among the several courts, and the regulation and control of its exercise and of judicial procedure in general, by the Supreme Judicial Court or the Justices thereof, or a council of judges of the several courts, or of judges with such others as they may join, in such manner as such court, justices or council shall from time to time prescribe by general rules; *provided, however*, that nothing in this article shall be deemed to authorize the abrogation of any rights otherwise guaranteed by the Constitution.

The resolution was read a second time Thursday, July 18, 1918; and it was rejected the same day.

THE DEBATE.

Mr. PILLSBURY of Wellesley: I desire to make a brief statement touching this resolution and the one which stands next upon the calendar, with a view as it may be, to saving the time of the Convention. The two resolutions are really but one, being but different forms of expressing substantially the same purpose, and they were submitted with a special report which gentlemen will find printed in Convention document No. 314. The purpose of the resolution, for I will speak of them as one, is to vest in the courts, which already have the whole judicial power under the Constitution, the control and regulation of its exercise, which has been left, whether wisely or unwisely, whether necessarily under the Constitution or unnecessarily, principally to the Legislature. The resolution is in line of a Nation wide movement for the recasting of judicial procedure. I do not say for

its reform, because that word may convey an unpleasant suggestion of a need of reform which perhaps does not exist in Massachusetts. The movement is for the recasting and improvement of judicial procedure. It is actively going forward in some of the most intelligent States, and is strongly advocated by many of the most enlightened and influential lawyers in the country, especially, in this neighborhood, the accomplished dean of the Harvard Law School. The general purpose of the resolutions cannot be more shortly stated than they are in the special report of the committee, being to coördinate and harmonize the work of the various courts, avoid waste and duplication of labor by the judges, abridge the unnecessary volume of clerical work involved in the present system, reduce to their lowest practicable limits the expenses of litigation both to the parties and the public, simplify and speed the trial of causes, and especially of small causes, and in general to promote efficiency, economy and dispatch in the administration of justice. These are the purposes of the resolution. I have heard whispers, or have heard of whispers though they have not come directly to my ears, that the resolution conceals some deep laid scheme or schemes of extending the power of the judges to a degree which perhaps none of us would favor. Of this it is sufficient to say that it is pure imagination. There is nothing concealed in the proposal. It is only intended to make the administration of justice cheaper, speedier and more efficient, — consummations which seemed to the committee devoutly to be wished.

The long interval which has elapsed since the resolution was reported last year has afforded time and opportunity to develop the sentiment of the people who ought, perhaps, to be most interested in the subject, especially the judges and the members of the bar. I regret to say, as it has been a great disappointment to the committee, that the resolution has seemed to excite little interest among the members of the bar except a hostile interest for which I am wholly unable to account, for it seems to the committee a movement in which all the legal fraternity ought with one accord to join. The fact is, however, that the profession has not risen to the proposal to any extent whatever. The local bar associations have paid no attention to it, so far as I am aware. The able committee on the Judiciary is understood to be arrayed against it, though I cannot conceive why it should be, and I am told that active opposition to it has already been urged upon members of the Convention. There is, as we all know, on the part of the Convention, not perhaps a jealousy of the judges, but a critical attitude toward the manner in which judicial power is supposed to be exercised, which would make such a substantial extension of the power of the judges as the resolution involves exceedingly doubtful. In this state of things it can hardly be expected that the judges themselves would express an active interest in the subject even if they feel it, of which no evidence has reached the committee. In short, for it is idle to enlarge upon it, the committee has come to the conclusion that the prospect of the passage of the resolution is so small that they are not warranted under the present urgency to finish the work of the Convention already too long protracted, in pressing it upon the Convention for the extended discussion which it would probably occasion and which indeed it ought to have before adoption, and accordingly they feel

that they are discharging their own responsibility by this explanation unless more is called for, leaving the resolution to the Convention for such action as it may see fit to take.

Mr. McANARNEY of Quincy: In view of the statement made by the chairman of the committee on Judicial Procedure I assume there is no question but what the Convention will refuse to adopt the resolution. This resolution was considered by the Judiciary Committee. Had it been urged upon the Convention, it would have met upon the floor of this hall with considerable opposition. It has not met with favor from the bar, as the gentleman has said, and nowhere have I found any sentiment in favor of it. In view, therefore, of the fact that the committee itself does not care to urge the matter upon the Convention those of us who are opposed to its adoption by the Convention will not take your time in arguing against the proposition.

X.

POWER OF COURTS TO DECLARE STATUTES UNCONSTITUTIONAL.

Mr. Walter H. Creamer of Lynn presented the following resolution (No. 47)

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

In the determination of any case, all courts, other than the full bench of the Supreme Judicial Court, shall assume that all acts of the General Court or of the Congress of the United States or of the Legislature of another State are constitutional.

No such act shall be held to be unconstitutional and void by the full bench of the Supreme Judicial Court without the concurrence of at least all but one of the justices of said court.

The committee on the Judiciary reported that the foregoing resolutions ought NOT to be adopted and the discussion of them was begun by the Convention, sitting as a Committee of the Whole, Friday, July 27, 1917.

Mr. George W. Anderson of Brookline moved that the resolution be amended by substituting the following new draft:

ARTICLE OF AMENDMENT.

No law duly enacted by the General Court shall be nullified as unconstitutional except by the Supreme Judicial Court with the concurrence of not less than two-thirds of all the justices thereof.

The amendment was rejected in the Committee of the Whole Wednesday, August 1, by a vote of 37 to 137.

The resolution was rejected by the Convention Thursday, August 2, by a vote of 77 to 161, a call of the yeas and nays having been ordered.

Mr. Charles Stoeber of Adams presented the following resolution (No. 97):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

No court shall assume or exercise the power of nullifying or suspending the operation of any law, or any part thereof, enacted directly by the people or by the General Court alone or in conjunction with the people on the ground of unconstitutionality or for any other reason.

The resolution was rejected by the Committee of the Whole Wednesday, August 1, 1917, and by the Convention on the following day.

Mr. E. Gerry Brown of Brockton presented the following resolution (No. 212):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Any bill or resolve having the force of a law through any form or manner prescribed or hereafter to be prescribed in the Constitution shall not be declared unconstitutional by the Supreme Judicial Court if any judge of said court shall hold and express opinion that the bill or resolve in question is constitutional.

The resolution was rejected by the Committee of the Whole Wednesday, August 1, 1917, and by the Convention on the following day.

THE DEBATE.

Mr. CREAMER of Lynn: This resolution was offered by me at the instance of attorneys of some standing in this community; it has failed to find favor with the members of the Judiciary Committee. It is not my purpose to debate the subject at any length; for, in common with many laymen in this committee, I still am somewhat slightly bewildered by yesterday's avalanche of words. I also realize that a layman ought not to get in between two opposing groups of lawyers, any more than a man ought to interfere between husband and wife. I therefore shall content myself with asking the delegate from Boston (Mr. Montague) who has charge of this report, two simple questions. First: If the unanimous verdict of a jury is necessary for the protection of an individual litigant in a petty civil action, is not the unanimous verdict of the Supreme Judicial Court equally necessary for the protection of the community in setting aside an act of the legislative authority of the Commonwealth, a coördinate power of government? Secondly: Should an act of that same legislative authority be set aside by the Supreme Judicial Court if two or three members of that court say that that act is constitutional?

I believe the distinguished delegate from Randolph (Mr. French) said yesterday that minorities often were right. I submit, sir, that the present practice is a serious encroachment of the judicial power on the legislative power and is fraught with some danger to both.

Mr. MONTAGUE of Boston: It does not seem to me, Mr. Chairman, that any arguments have been presented thus far which would lead this Convention to consider this resolution with great seriousness. It seems to me that the gentleman in the third division (Mr. Lomasney of Boston) laid down yesterday a very good rule for this committee or this Convention to follow, which was, in substance, as I understood him, that unless there was shown some reason, some substantial reason for a change, we had better stick by the Constitution which thus far has carried us so safely and so well and so long.

The committee on the Judiciary, as the gentleman in the third division (Mr. Creamer) says, did report unanimously against this proposition. No person appeared before the committee on the Judiciary to advocate this proposal except the gentleman who has just spoken; and while that gentleman, as we all know, either in this Convention or outside of it, is a host in himself, the fact that only one gentleman appeared, even an eminent one, would not indicate that the faults to be found with our present system had become so widespread and had embraced so many people that there was any even moderate call for a change.

I did find some things in looking up the matter which may be of interest to the Convention, to those who are not already familiar with them, — to the laymen, as he suggests, — although from his argument before the committee and here no one would know that he was a layman. This proposition embraces two distinct features. The first is this: That no single Justice shall be allowed to declare a statute or resolve of this Legislature, or of the Congress of the United States or of the Legislature of any other State, unconstitutional. The second proposition is that our Supreme Judicial Court cannot declare any of

those statutes unconstitutional unless all the court save one join in that opinion.

Now, as every attorney knows, and maybe the laymen too, when a case of this kind comes before a court it always comes in the first instance before a single Justice. He may decide the case himself and give the party aggrieved a right of appeal, or he may report or reserve the case without deciding it; that is, he may report or reserve it to the full bench of the Supreme Judicial Court; and we find that that custom has been followed, you might say, both ways.

I find in looking up the history of what our courts have done in deciding statutes unconstitutional, that in the time covered by our reports, which is from 1804 to 1916, almost inclusive, there are only 59 cases in which our Supreme Judicial Court has set aside as unconstitutional either the acts or resolves of this General Court. Fifty-nine cases, — some say less. Some cut it down to fifty-two or fifty-three; but fifty-nine, as far as I can find, covers them all. Of that number eight were set aside for violation of the United States Constitution, and fifty-one for the violation of our State Constitution. I find that in that length of time our Supreme Judicial Court has set aside only once, or has declared unconstitutional only once, an act passed by the United States Congress, and that was in 1814, — a long time ago.

I find that in only two cases has our Supreme Judicial Court set aside the statutes of other States as unconstitutional, and those two cases were cases in which the rights of Massachusetts citizens were involved, and if our courts had not had the power of decision, our own inhabitants, citizens of our own State, would have been wronged.

I find that of the fifty-nine cases that have come before the courts, in twenty-five of those fifty-nine the lower court has decided that question and left the parties to their appeal. In thirty-four cases they have reserved the decision or reported the matter for the full bench of the Supreme Judicial Court. In the twenty-five of those cases which have been decided by the single Justice, in every case except two they have held the statute constitutional, which seems to indicate that it is already a settled and established practice of our courts, referring to the first part of this proposition, for the lower court in the first instance to hold the statute constitutional and leave to the full bench the final decision. Of those two cases, where the lower court did decide, one was a case where this Legislature many years ago passed a law allowing the right of search in certain civil proceedings. The right of search, as everybody knows, always has been confined to criminal proceedings. The statement that a man's house is his castle is not literally true, but practically it is true, and it is one of the great fundamental stones upon which the rights and liberty of the Anglo-Saxon people and our people always have been supposed to rest. But this Legislature passed a law allowing the right of search, and the matter came up as it naturally would, before a single Justice, and it was up to him to either grant the warrant or not grant the warrant. He refused to grant the warrant, held the statute unconstitutional, and that decision was upheld by the full bench.

The other case, where the judge decided it, was where this Legislature passed a law that the mayor and aldermen of the city of Charlestown might grade any private way in any way that they saw

fit and assess the expenses upon the abuttors. They started out to grade a private way and cut it down eight feet below a man's doorstep, with no redress to him; and the lower court held the statute unconstitutional. And I will submit that in those cases where a single Justice has decided the statute unconstitutional they were well justified in so doing.

I find, to my surprise, that the decisions of the Supreme Judicial Court have been singularly unanimous. I find in the whole hundred and thirteen years that there are only three cases in which dissenting opinions have been written. In two of those cases one judge wrote a dissenting opinion; in the third case two judges wrote a dissenting opinion. I find among those cases, so far as the reports indicate, that there are only four other cases, — only four, — in which the decision of the court was less than unanimous. So that in all but seven cases of the fifty-nine in which our court has held statutes unconstitutional, the decision of that court has been unanimous. And I submit, Mr. Chairman, whether there is made any showing whatever of any necessity for a change.

The question which the gentleman puts up squarely is, in the first instance, a hard one to answer; that is, — why unanimity should not be required of judges as well as of juries. As to that matter I will say this first: That in what reading I have been able to do, whenever it has been brought up, there is not a jurist of any standing, or without any standing, who apparently, as far as I can find, has left his views in print, who advocates that it ought to be a unanimous opinion of the judges. They all find a difference, and I think there is a difference. The question of fact is settled then and there, for all time. It only comes up once. The decision of the jury, the way that it is rendered, is something that we have been accustomed to, we have got used to, we have grown up to for a great many years. The attitude of this Convention yesterday in Committee of the Whole indicates that we do not care to change it.

On the other hand, the custom of a majority opinion of the court has been felt to be for centuries the wisest way, on the whole, of arriving at a decision, realizing that when these great constitutional questions are considered there is a tremendous chance for a variation of opinion, just the same as there is between the attorneys of this Convention. It is an exceedingly delicate and complex matter; there is no doubt about it. We all of us are undecided when it comes to thinking of a constitutional matter, and it has been found, or it is thought to be, practically impossible in the long run that a full bench, the full court, should agree in every particular upon all matters that come before it. The present practice, as I understand it, — as I know, — is the practice in the Supreme Court of the United States, and, so far as I have been able to learn, is the practice in every State in this country; and, Mr. Chairman, it seems to me that in this particular at least we might leave our Constitution where it is. [Applause.]

Mr. McANARNEY of Quincy: I wish to add one suggestion to this debate. Stripped of all verbiage, this amendment proposes that a minority of two may prevent the Supreme Judicial Court from declaring a statute unconstitutional. If that be so, that in effect is giving a minority of two the power to declare a statute constitutional. That would be unique.

Mr. Brown of Brockton: Why I come into this thing is because you will meet a resolution two numbers below which is substantially the self-same proposition and we may as well have the debate here as on that. It was my purpose not to say anything; I said that before the committee. But I heard the debate yesterday, I listened to every word of it, and it has been asked here: "Where does a layman fit?" And sometimes perhaps I might take an independent position. And I heard a member, — I mean nothing offensive when I say of the union, but I am so used to saying it, — I heard a member of the lawyers' union, while they were in session, say something which to my mind was nothing more nor less than a, very well, — well, it was a well-worded roast of a Justice of the Superior Court, and I guess of more than one, and he is not the only lawyer whom I have heard do that. We are confronted also with the spectacle that a gentleman who once had an opportunity to appoint judges wants to defend somebody else who happens to come into office from having any such authority and he wants to give somebody else a chance to "o. k." appointments. So you see the point I am trying to get at now is not what has been but what may be. And while perhaps I do not know and I am not sure, yet I feel and I should hope that I would not in any way feel I was bound because I appeared satisfied when appearing before the Judiciary Committee. Knowing that I was in the presence of our beloved ex-Justice whose words yesterday interested us so much, — I want to pay my tribute to the press who have recognized that scene, and I must say from my long experience as a newspaper man there is nothing that I would like so much as a picture of this Convention at the moment when we were listening to his tribute to American manhood so far as the jury system was concerned. If it could be heard all over this Commonwealth, it might well still a large measure of the complaint against what is called class distinction and make us believe that we are a good deal better than we think we are.

But coming to this question I go a great deal further. The gentleman who has last risen says it is a unique provision that the minority should be held to control everything. Without going at large into the subject before the assembly here, who I know have better learning than myself, look at Poland as she stood for two hundred years, — a very, very much larger body than the judges of any Supreme Court that we have in any State of this Nation, and the vote of a minority of one was sufficient; and you cannot find much fault with the government when men submit to no laws except of their own making; and that making was such that they had the largest possible opportunity for a minority of one to interfere and see that they were not governed by the law. And it did not fall until that accursed commercialism, until that accursed golden calf which is getting into American institutions, found a way to get at men and corrupt them, just the same way as the monarchic institutions now find a way to get into Russia and corrupt her temporarily. I stand for a minority of one, but it is not in reality a minority of one. The gentleman who speaks so eloquently and to whom I listened so clearly when he laid down that decision in the Tuey case, — I say you have got it just right. It is one with the people, that is what it is, because the people, in all their majesty and through their legislative bodies, and the executive with all the checks and balances that have been contrived to guard against hasty decision

so that the people shall feel that it had the fullest possible deliberation, have acted. The bill shall come into the House of Representatives, which represents the people; it shall go to the Senate, whose official capacity, according to the Constitution of 1780, is to protect wealth. The Senate was organized for that purpose, — to protect wealth. The people were told to accept that Constitution because the Senate was to protect wealth. Then the bill goes to His Excellency the Governor, the representative of the people, for his action. It goes through all those stages and finally it comes to be a law; and then what? It goes up to the Supreme Judicial Court, — how? Private interests contending with each other. The public are not represented at all. The great fundamental principle that interested the people when the law was passed is not even presented to the judges. Then comes a decision. Do you say a change may not come here? How, or why not? These decisions are contagious. Look at the court in the State of New York handing down a decision in one of our labor cases and deciding in favor of the sweatshop and saying that they can see no hardship that a man should be not permitted to work in his own tenement making cigars, saying that it seems to be the best possible condition under which a man can work, saying that he can work in a crowded tenement making garments and carrying out the seeds of disease among the people, saying that it is man's natural right and he must be protected in his contract. And so they hand down the decision that it is unconstitutional, and no one was there to present to those judges the broad humanitarian police power, the good health of the whole people. It was the manufacturing interests that wanted that decision.

And again, go to the ideal that labor had when it acted on the great question of hours and conditions for bakers. The unions wanted bake shops clean; we do not want them going in there to make the bread with dirt of every kind all over them. We want if possible to keep the bakers even from going into their shops drunk, lest they may send out the influence of drink into the Commonwealth. And when we had worked and labored in New York to get those ideals into law, why, the court gave a decision that it was unconstitutional on the principle that a baker had the right of contract. That is what we are getting in court decisions. If you say that we do not get it in Massachusetts it is because the Commonwealth of Massachusetts is made up of men of good, hard common sense, just as our beloved former Justice (Mr. Morton) has pointed out. Now how long will it be so? I know how useless it is to argue on a question which perhaps already is decided, but I am here because I do not want to run away from my subject. I do believe in it.

Let me take another point. How eloquently the gentleman asserts and how sure he is that this is a proper procedure! But go to the Madison Debates on the Constitution that was made for the United States and find how many of the men who framed it were willing that the Supreme Court of the United States should hold this power which you say that they ought to have in this Commonwealth. Some of your Massachusetts delegates did not agree to it. Elbridge Gerry did not consent to it, and he campaigned against it. I admit that afterwards, I know not why, — I do not care; but possibly when he was running for Governor, to which office probably he was elected so as to

give an opportunity for the Democrats to get in more than they would have got if they had not got the gerrymander, — then he changed his opinion. We have had instances where one branch of government has defied the Supreme Court. In one case in the time of Thomas Jefferson when the Supreme Court laid down its decision, what did he say? "John Marshall has made his decision; let him enforce it. I am the executive of all the people. I stand by my act. That is my duty under the Constitution." The court had not the other arm it wanted in order to enforce its decision.

You tell me in these great economic and political questions it is safe to leave the decision to the Supreme Judicial Court, — why? Why should you burden them with it? Why do not you lawyers come forward and find some way whereby you can relieve these Justices of that burden? Where is our honored member (Mr. Whipple) who was a candidate for the office of President of this Convention? Will he please put into our Constitution some such change as he suggested down in West Virginia,[1] where he found that there was a reason why the Supreme Court should be divorced entirely from this idea of passing upon questions that were economic, and in the last analysis political, and which depended upon the political will of the people? I ask him that. Returning to the point that I once before made, that there was not one-third of the delegates to the National Convention, as you will see if you read Madison's Debates and read what they thought of the Supreme Court, who would have favored anything of the kind. Go out, for instance, from the Commonwealth of Massachusetts, into the State of Virginia or to James Wilson in Pennsylvania, or Hamilton in New York and Martin in Maryland, and see what they had to say about it. They were not at all sure of that principle, that it was wise to adopt it; and I am sure I am not. Later you have got to have the question of the last word, — I suppose it will be fought out here again, how? Because when you come to the initiative and referendum you may have the question as to whether the people shall have a right to review and change the decision of the Supreme Judicial Court on constitutional questions by taking the decision of the Supreme Judicial Court and putting the contrary to it and giving the people a right to say "Yes" or "No." Should they do that on any court question where it is purely a question of constitutional law and not a question of fact? Should they do that on a question of fact which relates to the condition of the people? The condition of the people is merely the result of how you keep house, and keeping house is your political machinery, and your political machinery is governed by your Constitution. When your method of keeping house is such that your house is in disorder and the people do not get enough to eat they are going to ask the reason why, and if that house is not kept right they are going to change the keeping of the house.

I hesitate to speak further because I have got one matter that I am more interested in. I violate no confidence when I say that I crossed over to speak to my friend who first spoke on this subject. I asked him if he was going to defend it and called attention to the fact that there was the same principle coming out in the debate then pending, that juries ought to be unanimous. I ask the gentlemen who speak here, what is the Supreme Judicial Court when it starts to pass upon a

[1] Referring to an address delivered by Mr. Whipple before the West Virginia Bar Association.

division in legal opinion? What is the Supreme Judicial Court in the last analysis? What is it but a jury? It is a jury that is deciding a question on a matter of law, not a question of facts, and how are they going to decide the law? On precedent. They take one precedent added to another, which in some form or other Julian says makes law. They are bound by precedent. I saw a person rise in the course of debate and I asked: "Is that a lawyer?" They said they did not know. Pretty soon he began to talk about authority. I said: "Yes, he is a lawyer; he belongs to the union."

I say with all respect, I recognize the importance of stability; I recognize that the whole point of a Supreme Judicial Court is to have it settled once for all that men may know the law. But I ask you, what chance have you got between the time that the Legislature passes an act and the time of the decision of the Supreme Judicial Court? Suppose the Legislature passes an act and under that act I suppose I have certain rights and I go forward on my rights and although I proceed according to the law the court in the end holds that I am liable for damages. I accept the act and then the court says, "The law is unconstitutional," and my acts have made me liable to damage, whereas if the law is sustained I am not.

If there is so much doubt that, when it comes to the court, four are one way and five are the other, do you say that that is final? In one of the decisions that affects the pocketbook of every man in this chamber and every citizen of this Commonwealth and of the United States, the court did hand down one decision. They handed it down in the case of the Legal Tender Act, taking the ground that certain acts that Congress had passed they could not do; that they had not the power under the Constitution. The question of what was coin was involved, — whether coin was paper or gold; and the court handed down a decision that the Legal Tender Act could not stand. Then what happened? Why, they changed the court. The incoming President changed the court when he had an opportunity and the court reversed its position and up the case went again. And I suppose your last decision stands and the last decision is entirely opposite; it says that Congress has the power without an emergency at any time to coin the credit of the people, into the legal tender power, into anything that it wants to put it on, — paper or metal. There is the court decision; it is not always stable.

Why was the court changed? Because the power of the people demanded it. Why was that decision of the Supreme Court handed down that the Adamson law was constitutional? I tell you that that court knew what feeling was behind it and what trouble was coming to this Nation if they handed it down the other way. They knew what was smouldering and they made their decision. Decisions of the court are based, I will admit, according to authority, according to precedent, but I will not believe so ill of the Supreme Judicial Court but what if it knows the common welfare and the condition of the people and it can be presented to them, but what they will take it into account. That is why I complain. If you are going to allow the majority in the court to decide, there should be somebody, the Attorney-General or somebody else, whose duty it should be to go to that Supreme Judicial Court when a law that has been passed by the Legislature is called in question and he should stand there as the

people's defender and argue the case from all standpoints. You cannot blame the judges if they hand down a decision if you are too confounded lazy to get all the facts into the case. Webster did not hesitate to get in everything he could in the Dartmouth College case, and there he got his decision on a point which he did not consider of any consequence. I know not whether that decision is going to stand always, but he got it on in a direction he was not looking for, showing how easily you sometimes can secure an opinion.

Why should a majority opinion of the judges stand if all the rest are opposed to it? What is there wrong in the idea that one with the Legislature is a majority for the Constitution, any more than there is in the fundamental that one with God is right against the world? What is there wrong in giving the Constitution the benefit of the doubt?

I think, Mr. Chairman and delegates, that I have said to you all I ought to say on a matter that I think is lost before it is voted on, but at the same time it sets me right. I should hate terribly to have it go out that there was no reason whatever given in this Convention when one man had taken the time to write a resolution and put it in and then when it was debated that he had not even the courage or perhaps the knowledge or perhaps the study to get up and say why he presumed to put in a resolution before the whole people of Massachusetts suggesting a change. Whatever may be the result of this vote I still have the opinion, — I would have it if I was a member of the Supreme Judicial Court, — I would feel that the doubt always ought to be with the people and never ought to be with those who seek to have a matter declared unconstitutional because of the fact that they are going to serve their own private interests.

Mr. Morrill of Haverhill: At this time I should discuss No. 97, which is somewhat related to No. 47, Nos. 97 and 212 being along somewhat the same line. I think that will expedite business as we expedited it when we discussed jointly all measures relative to trial by jury. While I agree somewhat with No. 47, my objection to it is that it appears to me as if it would confirm the usurped power now exercised by the courts when they assume to declare whether or not a law is constitutional. Never have the courts, either in the Federal Constitution or the Massachusetts Constitution, or in any amendment to either so far as more able men than I am have been able to discover, never have the courts been given the power which they now are exercising. In the Articles of Confederation, the first Constitution of the United States, which preceded the present Constitution and which, after having been adopted by the Continental Congress in 1777, became operative in 1778, the courts were not given such a power. And despite the fact that Congress, according to that first Constitution, consisted of but one House, with no Senate being tolerated, and the instant recall being one of the principles of that Constitution, — the instant recall of Congressmen who had been elected for but one year terms, — yet despite all that, the courts were not given the right to interpret constitutionality. Nor were they given that right in the present United States Constitution which was adopted by the Convention of 1787 and later approved by State Conventions in the several States. Nor have the courts of Massachusetts been given that right. Article XX of Part the First of the Massachusetts Constitution, under the

heading "A Declaration of the Rights of the Inhabitants of the Commonwealth of Massachusetts" — that portion of the Constitution of our State says:

> XX. The power of suspending the laws, or the execution of the laws ought never to be exercised but by the Legislature, or by authority derived from it, to be exercised n such particular cases only as the Legislature shall expressly provide for.

Now I ask those who are defending the adverse report on this resolution (No. 97) which would restore the rights which have been taken from the people, — I ask those defenders to show wherein the Legislature has passed any such law conferring upon the courts the power which they could have only by the Legislature's consent according to our own Constitution?

Article IV of the Declaration of Rights of our State Constitution says that the United State Congress shall have no rights except what are conceded by the States. Does not all this confirm the fact that neither the Federal nor State courts have the right to interpret constitutionality of legislation?

Now, we inherited our political institutions more largely from Great Britain than from anywhere else. England has no written Constitution. The courts of Great Britain have not been given any constitutional right to interpret constitutionality. The Magna Carta, the only constitutional compact in England, only two articles of which are still in force, the rest having become obsolete, does not give the right to interpret constitutionality. The highest court of England dare not even strike out a comma from a law passed by the British Parliament. Yet in this country our courts interpret as to whether a semicolon is in or ought to be in, or some other phase of a question relating to a law; and they go further and even say that a law is unconstitutional. Nine members of the United States Supreme Court assume the power after the House of Representatives and the United States Senate, which was established as a bulwark by the landed aristocracy, a bulwark of conservatism, — after a law has passed that body and has been signed by the President, five out of the nine members of the Federal Supreme Court assume to become an extra legislative body and declare whether or not that law shall be operative; and that the people who, perhaps, have been fighting for a generation to obtain that law shall not have that law. And in our own Commonwealth of Massachusetts the Supreme Judicial Court of seven members also has assumed the power to say whether or not a law passed by the Legislature shall become operative or remain operative.

I submit to you the question, when our Constitutions say that all authority lies with the people and the authority exercised by our officials is derived from the people, and that our public officers always shall remain subservient to the people, — I submit to you, to carry that theory to its logical conclusion, should not the people be the ones to say whether or not a law shall remain in force? They should give their consent, either by acquiescence or through a referendum if they are not satisfied to silently consent to a law becoming operative or remaining so.

Again, when the Federal Constitution was adopted by the thirteen States of that time, those States were very jealous of conferring any power upon a centralized government, and they provided, as I have shown we did in Massachusetts, against the Federal government or the

courts or any branch of Federal authority having too great power. And Elbridge Gerry, one of the few delegates from Massachusetts to the Constitutional Convention of 1787, protested against that Constitution, our present Constitution, after it was adopted, on the theory that he believed the courts had been given too much power because they were given the power, we will admit, — or we will assume that they were given the power, — to interpret what a law meant and enforce it; that is, as to what the Congress meant to have done, not as to whether Congress had a right to pass such law, but only the enforcing of that law.

Now this Federal Supreme Court long ago ruled that even if a legislative body grants a franchise or through any other act does something which is corrupt, anything secured through bribing legislators shall remain in force. They declared that the Constitution did not prohibit a thing secured by corruption from remaining operative, although in all other respects it has been ruled that securing anything by fraud impairs a contract. Gentlemen, the courts made that ruling in favor of predatory wealth and in favor of the large public service corporations and the trusts who are ably, — more or less ably, at least, — represented by corrupt lobbyists and other lobbyists at the State House each year and in Congress. The courts which declared that those things should remain in force although improperly secured, those courts after many years of hesitation following the adoption of the Constitution, finally assumed the power to say whether or not a law passed by Congress was constitutional.

Now, Mr. Chairman, my only doubt in regard to document No. 47 and the ones following (Nos. 97 and 212), is whether or not, if we should pass either of those, we should be confirming a power which never has been given to the courts, a power which, it is admitted by the most learned lawyers of this country, the most learned honest lawyers perhaps I might say, has been usurped by the courts. Perhaps some of the corporation lobbyists will take issue with me upon that subject, but I want them to show me where the courts secured this power if they did not usurp it. Perhaps they will say, as some of them have said to me and to others, that it was not necessary to state in the Federal Constitution that the courts should have that power, because while the courts of England do not have that power, — I do not know whether they exercise it or not, but it never was given to them, — while they do not have that power, yet under our Colonial form of government the King, who was a real monarch at that time, used the courts the same as he used the Governors appointed by himself, — he used both courts and Governors in many instances, — to oppress our people with, and it has been claimed by some of the leading apologists for the present exercise of that power by the courts that from the fact that the courts already had exercised that power it was unnecessary to restate that power in the Federal Constitution.

I submit that that is not a solid ground to base an argument on, because after our Constitution makers had put all kinds of checks and balances in the Constitution in order to prevent an abuse of power by either the legislative, executive or judicial branches of government, to the extent which they in their very extreme conservative view judged should be the limitation, yet four times in that Federal Constitutional Convention of 1787 they very earnestly debated and each time over-

whelmingly defeated the proposition of inserting in that Constitution the right of the courts to interpret the Constitution, and, if my memory serves me correctly, not at any time did more than three States or more than half a dozen delegates by their vote support the proposition that the courts be granted this power. I believe what we should do is adopt No. 97, which has been introduced by a member of this Convention, to provide that the courts shall not assume or exercise the power of declaring acts unconstitutional.

I want to call to the attention of those who advocate popular rights and the rule of the people, and the initiative and referendum and other propositions, that if No. 97 should become a part of our State Constitution it would protect laws enacted through the referendum. As there are only half a dozen lines I beg your indulgence while I read it:

ARTICLE OF AMENDMENT.

No court shall assume or exercise the power of nullifying or suspending the operation of any law, or any part thereof, enacted directly by the people or by the General Court alone, or in conjunction with the people, on the ground of unconstitutionality or for any other reason.

Mr. BARTLETT of Newburyport: There is said to have been a law passed in Colonial times that if a man should shoot a wolf and go to the selectmen and cut their ears off he should receive a bounty. Now I would ask the gentleman if a statute of that sort should be passed by the Legislature should a court set it aside?

Mr. MORRILL: Mr. Chairman, while I do not agree that that was a good law, particularly for the selectmen, yet I say that the courts should not declare that law inoperative, because it would be establishing a bad principle to concede them the right to exercise that power in any case; but the initiative and referendum could repeal that law, provided the people wanted it repealed, and I believe they would. I yield for another question (Mr. Brown of Brockton having addressed the Chair during Mr. Morrill's remark).

Mr. BROWN: I should like to ask the gentleman if the Supreme Judicial Court, the lawyers being so busy, would be apt to take the case up until the gentleman had cut off the ears of the selectmen and got into court in another way?

Mr. MORRILL: I claim that the people through the initiative and referendum could repeal that law far more expeditiously than the Supreme Judicial Court could, before it reached them and was decided by them, judging from a great many past instances. I hope the delegates are all convinced and will vote to protect our rights which have been guaranteed to us by both Federal and State Constitutions, but both of which have been overridden by the judicial power, which our forefathers held to be the greatest danger that threatened the perpetuation of republican institutions, and which caused many of our States to hesitate to approve the adoption of the Federal Constitution, for, although four times in the Federal Convention the principle of giving the courts that power had been frowned upon, they were afraid that the courts might usurp that power. That it has been usurped and now has been exercised for many years does not make it right. I hope we shall stand by our forefathers, who instituted this government, both Federal and State.

Mr. MERRIAM of Framingham: This discussion began on resolution

No. 47, but the scope of the debate, particularly the remarks of the gentleman from Haverhill, has been so broad that it includes resolution No. 97, which follows. In regard to resolution No. 97 I have the honor to represent the committee. That proposition would prohibit our courts absolutely from declaring statutes unconstitutional. Our committee unanimously reported that that resolution ought not to be adopted.

There is a fundamental assumption in the remarks of the gentleman from Brockton (Mr. Brown) and in the remarks of the gentleman from Haverhill (Mr. Morrill), an assumption which is not sound. Both of these gentlemen assume that by some superior claim not authorized by the people the courts claim the right to dictate or to exercise authority over the Legislature; that the Legislature is the representative of the people and the only representative of the people. Mr. Chairman, that proposition is fundamentally unsound. In our Constitution the courts are created as creatures of the people. The Governor is created as a representative of the people. The Governor is the people's representative in the executive function of government. The courts are the representative of the people in the judicial department of the government and the Legislature is the representative of the people in the legislative department. And of those three departments, Mr. Chairman, the court occupies the weakest position. That matter was pointed out by Alexander Hamilton in words that are of pregnant meaning to-day, although they are the words of a century ago:

> Whoever attentively considers the different departments of power must perceive that, in a government in which they are separated from each other, the judiciary, from the nature of its functions, will always be the least dangerous to the political rights of the Constitution; because it will be least in a capacity to annoy or injure them. The Executive not only dispenses the honors, but holds the sword of the community. The Legislature not only commands the purse, but prescribes the rules by which the duties and rights of every citizen are to be regulated. The Judiciary, on the contrary, has no influence over either the sword or the purse; no direction either of the strength or of the wealth of the society; and can take no active resolution whatever. It may truly be said to have neither FORCE nor WILL, but merely judgment; and must ultimately depend upon the aid of the executive arm even for the efficacy of its judgments.

That, Mr. Chairman, suggests the true position of our judiciary. The judiciary does not dictate to the legislative or to the executive. A question arises as to what the Legislature may have done. Under the Constitution it is for the judiciary to determine or to define or to construe. Our Constitution is a citadel of the people's rights, but it is not a citadel of exact area with walls that fairly can be seen. This area may seem undefined. There is a power needed to define its exact scope. The Legislature is not the body to do that. That question, by reason of its nature, must be left to the judiciary. And when the judiciary decides, it does not decide as a matter of arbitrary direction to the Legislature or the executive. If a law fails it fails because of its essence; because it is unconstitutional in its character.

Let me suggest, Mr. Chairman, that there may be a dangerous compound abroad in the community; it is uncertain whether it is wholesome or poisonous. People interested in it go to a chemist to find out what it is. "Is this something dangerous or harmful? Is it wholesome as food or is it poisonous?" The chemist takes the substance into his laboratory; he applies tests, he examines it according to established rules, he analyzes it and he determines what is the

character of that substance. But the substance itself is harmful by reason of its essence, not by reason of any quality which the chemist has given it.

From the nature of the question, it seems to me that there is no other body but the judiciary to answer it. The Legislature is interested in its own acts. Such questions must be decided by an institution like our courts, created under our Constitution, given the same rights to speak for all the people that the Legislature itself has. I cannot follow the remarks of my friend from Haverhill (Mr. Morrill). I would follow rather this paragraph from "The Federalist," written by Alexander Hamilton so many years ago, but as I have said, of special meaning even to-day:

> The interpretation of the laws is the proper and peculiar province of the courts. A Constitution is, in fact, and must be regarded by the judges, as a fundamental law. It therefore belongs to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; or, in other words, the Constitution ought to be preferred to the statute; the intention of the people to the intention of their agents.

Again, listen to this paragraph:

> Nor does this conclusion by any means suppose a superiority of the judicial to the legislative power. It only supposes that the power of the people is superior to both; and that where the will of the Legislature, declared in its statutes, stands in opposition to that of the people, declared in the Constitution, the judges ought to be governed by the latter rather than the former. They ought to regulate their decisions by the fundamental laws, rather than by those which are not fundamental.

In view of the light of this authority, the action of the courts is not usurpation. It is the legitimate function of the courts acting not in defiance of the people, not in defiance of the Legislature, but in behalf of the people by means of a Constitution which the people have established. [Applause.]

Mr. SULLIVAN of Salem: I want to make a few observations, first with regard to the remarks of the gentleman from Brockton in the second division (Mr. Brown). I think, in the first place, his statement with regard to the decisions of the justices of the New York courts in the sweatshop and bakeshop cases, if he reads them thoroughly, is a pretty good argument for the appointive system of judges for life that we have in Massachusetts and not for the elective system of judges that they have in New York.

He also made the statement that the people of the Commonwealth were not represented before the Supreme Judicial Court and he referred to the power that the courts seemed to assume or take away from the people. My brother on the Judiciary Committee in the rear row (Mr. Merriam) has taken care of the greater part of that question. But let me state that the Attorney-General not only has the power and the right to appear for the people of the Commonwealth before the Supreme Judicial Court to defend any bill or law passed by the Legislature, but that the Legislature has the power to direct him to appear there. I hold in my hand a book containing a list of all the statutes and laws that have been declared unconstitutional by the Supreme Judicial Court of Massachusetts, and I find that the Commonwealth was represented in many of the cases by the Attorney-General himself or by some of his assistants. The measure advocated or supported by the

gentleman from Haverhill in this division (Mr. Morrill), (document No. 97), — that measure, Mr. Chairman, in my opinion, simply would substitute the tyranny of a majority and take away every protection to individual rights whether the minority of the court remains as it is in certain of these measures or whether the number of the minority shall be changed later.

Futhermore, he (Mr. Morrill) says that the courts have assumed authority. I think that my brother on the Judiciary Committee in the third division (Mr. McAnarney) has answered that pretty well. There is a decision, however, and a few other things to which I wish to call attention.

In the words of Chief Justice Parker, —

whenever it manifestly appears to the judiciary power that an act, complained of, does in fact violate the Constitution, or affect the rights of individuals in a manner which is repugnant to its character and principles, there is no doubt that such acts must be declared void and inoperative. For the Constitution is the supreme law of the land, and the only source of authority to the Legislature, as well as to the other branches of the government.

And for the information of the gentleman in the second division from Brockton (Mr. Brown) I give the citation of that case and he might be interested to read it:

Portland Bank v. *Apthorp*, 1815, 12 Mass. 252, 253.

In a later case along the same lines, the court said:

But this is a high and important judicial power —

that is, declaring statutes unconstitutional —

not to be exercised lightly, nor in any case where it cannot be made to appear plainly that the Legislature have exceeded their powers. It is always to be presumed that any act passed by the Legislature is conformable to the Constitution and has the force of law, until the contrary is clearly shown.

This is amplified in the case *Norwich* v. *County Commissioners of Hampshire*, 1832, 13 Pick. 60, 61.

Another case which shows the attitude of the Supreme Judicial Court on all these questions has been about the same since the Constitution was originally adopted, reads in part:

And even though the act may in theory be unconstitutional, the unconstitutionality may be set up only by the parties affected thereby, and if they do not object, the law will be enforced. (*Hampshire* v. *Franklin*, 1819, 16 Mass. 76, 86.)

This shows to my mind that the courts do not usurp or assume any power, they do not declare an act unconstitutional until some of the people whose rights are affected appeal to the Supreme Judicial Court that their rights have been trampled upon and apply for relief.

One other point, Mr. Chairman, it speaks of in this same volume:

As much of the criticism of the courts for their actions in declaring statutes unconstitutional has arisen out of their consideration of labor statutes and statutes having to do with the regulation of public service corporations, it is to be noted that of the statutes in the above table, five (four being special statutes and one a general statute) attempted to regulate and impose obligations on public service corporations, and three purported to be for the benefit and protection of wage-earners. [1]

I think, Mr. Chairman, that covers all that I have to say. I have simply tried to cover some of the points that were not covered by previous speakers.

[1] James M. Rosenthal of Pittsfield, Mass., in Mass. Law Quarterly, August, 1916, page 318.

Mr. CHOATE of Southborough: I cannot claim to be able to add anything to the clear and satisfactory statement which has been presented by the two gentlemen who have preceded me. It is a timely statement that they have made, and one which ought to come home to every one of us and receive full consideration, because there is no function exercised by our courts that is so persistently misdescribed as the function of declaring laws unconstitutional. Gentlemen who state that the court by that process annul laws and usurp functions that never have been vested in them fail utterly to appreciate the form of government under which we live. We live in this State and in every other State of the Union under a constitutional form of government, where we have agreed to abide by the terms of a written Constitution, and that Constitution, in the language of the Preamble in our own document, is a solemn compact and agreement between the majority of the people, all the people and every individual citizen, for the sole purpose of protecting and preserving the rights not only of the majority but the rights of the minority and the individual.

A slight analysis of the situation which develops when the court is confronted with the question of the constitutionality of a law it seems to me answers all the objections that are raised by those who urge that the power to pass upon that question be taken away from the courts. It cannot be questioned, can it, that the Constitution when once adopted by the people is the supreme law of the land? It cannot be questioned but that is what all the people have bound themselves to obey and to be governed by, that that is to take precedence of every law and ordinance that thereafter may be passed by any authority. Well, then, the Legislature passes a statute. The question arises, is there a conflict between the provisions of the statute and the rights and liberties which the Constitution has guaranteed to protect and preserve? Who is to determine that question? My friend from Haverhill (Mr. Morrill) says the Legislature is. What would be the result? The Legislature would uphold its own views, and the Constitution would be gone. There would be no guarantee preserved which was the result of the solemn compact entered into between the people and every individual of the State.

The function of interpreting a law has been regarded for almost all time as a plain judicial function. It is so regarded in England. It is so regarded in every one of our United States. There can be no other body that could be vested with that function except the court. If no one is to decide which is paramount, the Constitution or the law passed by the Legislature, obviously you have a condition of chaos. Neither law would be followed or could be executed, from the very necessity of the thing. That department of the government which is vested by the Constitution with the power of interpreting the laws must interpret between the Constitution and the laws of the Legislature, and when they find that the law passed by the Legislature is in conflict with the Constitution it is their plain duty to declare that the Constitution, which is the ultimate, fundamental will of the people, a solemn compact by which they bound themselves to abide, must prevail and be supreme.

Now, the effect of the two measures which have just been discussed here this morning, must necessarily be this: If resolution No. 97 becomes a part of our Constitution, the power now vested in the courts

to interpret the laws and the Constitution and determine which is supreme, would have gone, and with it the supremacy of the Constitution would have gone, and any Legislature which passed a law, which believed in it, if given the power to interpret it would interpret it in such a way as to overbear the Constitution. If, on the other hand, resolution No. 47 becomes a law, it means this, as was so plainly and concisely stated by the gentleman from Quincy (Mr. McAnarney): That not only do you take away effective power of the court to interpret and construe the law and compare it with the Constitution, and if there is a conflict to uphold the Constitution, but you leave it in the power of two judges, a small minority of the court, to paralyze the power of the court to exercise that essential and vital function.

Mr. PILLSBURY of Wellesley: I do not rise by any means because I think it necessary to add anything to what has been said by members of the committee on the Judiciary and by the gentleman from Southborough, but because I think one view of this proposal may properly be suggested, and perhaps ought to be, to which I have not heard any allusion. Every man in this Convention, including my friend from Lynn (Mr. Creamer) who offers this proposal, knows that if any one obligation of a judge is sacred and inviolable, an obligation upon which the integrity of the whole administration of justice depends, it is to decide every question which comes before him upon his conscience and his convictions. It is now proposed to write into the Constitution that he shall not decide a particular class of questions upon his conscience and his convictions, and if he does, that such decision shall not prevail or be of any effect. That is precisely the substance of the proposal, and the statement of it carries its own answer and leaves no room for argument.

Mr. CARR of Hopkinton: I have refrained from entering into a great many of the debates that have taken place on the floor of this Convention, for the purpose of saying a word or two on this subject and another subject kindred to it, so that I might be listened to without having the delegates feel that I was annoying them too much by speaking thereon. I have listened with a great deal of attention to the gentleman in the first division (Mr. Montague) who undertook to defend the committee's report on No. 47. He only touched, I believe, on the first part of that, and that is the part in which I am vitally interested, the first paragraph of No. 47. I might say, while this is a non-political assemblage, that there was a large party a few years ago who came out for that article of amendment, and introduced it and tried to advocate it in the Legislature for two or three years, namely: To take away from the inferior courts of this Commonwealth the right that they had taken to themselves of interpreting the constitutionality of acts of the Legislature. Now, the gentleman in the first division (Mr. Montague) admitted that in his research he found fifty-nine cases, I believe he stated, or something like that, where inferior courts had attempted or did undertake to pass upon the constitutionality of acts of the Legislature.

I know, and it is known absolutely to every member of this gathering, because it is not so very long ago since it occurred, that we had a judge of our Superior Court, — not the Supreme Judicial Court, — sitting right here in Pemberton Square, who was sitting in a criminal session at that time, who undertook to pass upon the constitutionality

of a statute upon which employees, the six superintendents of the Boston Elevated Railroad, had been indicted. That judge, whom every lawyer practicing in Boston knows, without mentioning any names, as was intimated by a gentleman in the fourth division yesterday, also was charged openly in the corridors of the court-house with being under the influence of that great public service corporation. And what did we find with reference to this particular judge's action on that indictment of those six superintendents? He undertook to say that the law upon which those men were indicted was unconstitutional, and it was stated by the gentleman who attempted to defend the report of this committee that there was no necessity for changing the Constitution with reference to this feature. If one judge even, one inferior judge, undertakes to set aside the acts of any Legislature, is it not well that we should closely define in our Constitution that no judge of any inferior court ought to pass upon the constitutionality of a question upon which the Legislature, which as we know is the one body that does give expression to the will of the people, already has passed?

I am not going to ask this Convention to pass on the second section of this proposed amendment, although I am personally in favor of that, but I do feel that this Convention ought to say in our Constitution that the judges of no inferior court should pass upon constitutionality. We have instances that never come to the attention of the average man, that never come to the attention of the average lawyer. The lawyer may know about it in trying the case. We have had cases in the inferior courts where the judges have said: "Why, the Legislature did not know what they were doing when they passed that law; the law is unconstitutional." That decision is never recorded. There is no way that any lawyer can know about it. The only people who happen to know about that judge's decision and his interpretation of that act, are the parties who happen to be in the court room at that time. And there is no appeal from it. The judge may not say: "I find the act to be unconstitutional," but in his argument he will tell the lawyers who are assembled in the court-room that he bases his decision on the fact that the Legislature went a little too far in passing that law, or that the Legislature did not intend what it seemed to have said in the law that was passed. I say, Mr. Chairman, that it will not do any harm to put into our Constitution a provision limiting the power of the judges of our inferior courts, when we have those instances that have been cited here of certain judges who have forgotten the duty that they owe to the people or to their oath of office and have undertaken to pass upon the constitutionality of an act. I have had judges ask me, when I appeared before the Judiciary, if I knew of any instances where judges of inferior courts had attempted to pass upon the constitutionality of acts of the Legislature, and I have told them the different instances that I knew.

Now, what harm can it do? What harm can it do for us to say in our Constitution, as part of our fundamental law, that no judge, of an inferior court at least, shall declare an act of the Legislature unconstitutional? In that case of the six superintendents of the Boston Elevated Railroad, the district attorney and his office had no right of appeal to bring the matter to the Supreme Judicial Court. There was no way in which he could test the constitutionality of that act, because

the prosecuting attorneys had no right of appeal. The only objection that I hear to the proposition is that it does not happen very often. Mr. Chairman, if it happens at all, if any judge, any inferior court judge, — and it has been admitted here that that thing has happened a good many times, — if any inferior court judge does undertake it, if it is absolutely clear that it is unconstitutional for him to undertake to pass upon the constitutionality of any act of the Legislature, I think all doubt would be removed from his mind, and the matter then can go up and the party who may be affected by the law can bring the question up before the Supreme Judicial Court and have the Supreme Judicial Court pass upon the constitutionality of the law. That is the only way that we can have that question settled, the only way it ought to be settled, whether we should decide that it ought to be settled by a majority of the Supreme Judicial Court or whether we should decide that it ought to be settled by six judges of the Supreme Judicial Court.

While I am not at this time going to propose any amendment, I do feel that there ought to be an amendment introduced here that embodies the first section of the proposed amendment, namely: That no judge of any inferior court shall have the power to pass upon the constitutionality of any act of the Legislature. I feel with that done we shall have gone a great way.

I have listened with a great deal of attention to the member in this division behind me (Mr. Merriam), wherein he stated that the judiciary were just as much the representatives of the people as the legislators, that our form of government presupposes that our judiciary shall be just as much the representatives of the people as the legislators are; but you must remember that in this State our judges are not so classed. They are appointed for life. They are appointed and, because of that appointment, they cannot be said to represent the whole of the people, only in so far as according to their conscience they deem that their duties and their obligations should be so extensive as to be representative of the people. I have given instances, and I know of instances, where they do not represent all the people; they represent simply in a great many cases the influences and the interests that were back of their appointment. So for that reason, if we are going to continue to have our present form of appointing judges to office, namely, that they are appointed for life, surely we ought not to say that it is too radical to ask that some limitation shall be put upon their power whereby they attempt to pass upon the constitutionality of the acts of the Legislature.

The only defence that I have heard, Mr. Chairman, to this proposition, is that it does not happen very often. Some of the judges have told me that they have arranged among themselves not to attempt in the lower courts to pass upon the constitutionality of any law which they are called upon to interpret; but I say that it is all very well for the ones who have agreed and carry out their agreement; but the one judge who may be up in the western part of the State may attempt while he is sitting in his court to say: "Well, I don't think the Legislature knew what they were doing. I think they were not a very bright lot anyway," as has been said, "and I think that a great many times Legislatures pass laws of the meaning of which they have not any knowledge." When a judge attempts to say that kind of thing

he is usurping power, Mr. Chairman, and I feel that it ought to be clear that a judge of an inferior court, who is called upon to administer the law as he finds it, should not go beyond the law-making power and say: "They did not know what kind of a law they were passing when they were passing it."

So I ask the Convention, again, if they will consider just the adoption of the first half of No. 47.

Mr. JONES of Melrose: During a long service of nine years in the Legislature it has been my duty to be a party to framing a great many acts involving the rights of owners of land. Those acts have included all of the great metropolitan takings, and the principal one has been, doubtless, the Metropolitan Water Act. They are very difficult acts to draw, for the reason that in invading the rights of the individual the committees drafting these laws have to be extremely careful not to interfere with the constitutional provision in regard to taking private property without compensation and for a public use. Now I understand the position of the gentleman from Brockton (Mr. Brown) and the gentleman from Haverhill (Mr. Morrill) to be that in the enactment of legislation the General Court, the Legislature, shall be supreme and that it is proposed to take away from the Supreme Judicial Court all power of passing upon the constitutionality of these acts. I wish to say that from my experience it is absolutely impossible in the framing of these great pieces of legislation for the legislative committee or the Legislature to pass finally upon these questions, — it is absolutely impossible. We do the very best we can, but we must of necessity leave the final decision as to the constitutionality of some of these great acts to some other tribunal, and what other tribunal is there to whom this power can be left except the judicial department of the government? It is not to the executive, it is not to the legislative; it must be for the judicial. I rise simply to ask this question, Mr. Chairman, if the gentleman from Brockton (Mr. Brown) and the gentleman from Haverhill (Mr. Morrill) realize that in striking down this power which now is exercised by the judicial power of the government they are striking down one of the most sacred and solemn safeguards that is thrown around the property rights of all the people in this Commonwealth.

Mr. MORRILL: I notice that the gentleman said striking down this power now exercised. Whether that was stated that way intentionally or not I do not know, but it was stated correctly. He did not state that it was striking down a right which they are exercising, but a power which they are exercising. Now, I have failed to hear any member who has taken the other side on this question, — I have failed to hear one of them, — show wherein either the Federal or State Constitution grants to the courts this power. The principal points I have heard them advocate are that some brilliant lawyers, many of whom obtain very large fees from corporations for their services, believe that the courts should have that power and continue to have that power, — not the right, but the power. Why, one of the men who obtains large fees for appearing before the Legislature every year in behalf of the corporations also took the floor, and despite the fact that he has previously served as Attorney-General of this Commonwealth I failed to hear him show wherein they have been given this power.

Now, I quoted Article XX. Oh, first I will say that Alexander Hamilton was quoted by the member in the rear of the third division (Mr. Merriam). He quoted Alexander Hamilton as saying that the courts ought to have this power. I tried to get the floor to add at that time some points in regard to Hamilton, but I could not get the floor, because too many others wanted it, and it was correct that they should have the next turn; so at this time I will read for the information of this committee in regard to who Hamilton was:

But Hamilton wanted the President, after a select little group had elected him, to serve for life. Hamilton wanted United States Senators, after select little groups had elected them, to serve for life. Hamilton wanted to give the President power to appoint all Governors of States. And Hamilton wanted the President and the Governors of States to have the power of absolute veto over Congress and the State Legislatures.

No overriding of vetoes with Hamilton.

He was a brilliant man, but he was almost the last man who should have found favor in a republic. Socially, he was an aristocrat. Politically, he was a monarchist.

And to quote Thomas Jefferson:

Hamilton was not only a monarchist but for a monarchy bottomed on corruption.

Mr. Chairman, I quoted Article XX, Part 1, of our State Constitution to prove that the courts have not been given this power and are forbidden to exercise this power. I will not re-read that, but I will read Article XXX, Part 1, of the Constitution of Massachusetts, which says:

In the government of this Commonwealth, the legislative department shall never exercise the executive and judicial powers, or either of them: the executive shall never exercise the legislative and judicial powers, or either of them: the judicial shall never exercise the legislative and executive powers, or either of them.

This ought to be in large type:

. . . the judicial shall never exercise the legislative and executive powers, or either of them; to the end it may be a government of laws and not of men.

When the judiciary assumes to throw out a law enacted by the Legislature does it not assume the legislative function? Does it not prevent legislation from becoming effective?

Mr. SHEA of Dalton: Does the gentleman mean to say that the Executive exercises a legislative function when he vetoes a bill and suspends a law? Would that be contrary to Article XX, which you quote?

Mr. MORRILL: Yes, Mr. Chairman, he does in part, and he is authorized to do that by another section of the Constitution; but I want the opposition to show in some other section where the courts are given the right to do what Article XXX, Part 1, forbids them to do. I cannot find it. I never yet have found any one who could find it, in our State Constitution. I should like to find any one who can show in our Federal Constitution where courts have that power, either. As far as I have been able to hear, and I think I have heard practically all that was said, none of the speakers has shown where that power has been granted. I claim it has got to be granted before it can be honestly and rightfully exercised. Now, I will pause for a reply to that, to find out where that power is given.

Mr. MURPHY of Chelsea: I should like to ask the gentleman, if the courts have not been given the power by the Constitution to decide

upon the constitutionality of acts of the Legislature, but through the necessity of things have taken that power, if, and it has been proved during a long time and through long experience, that power has been properly used and is necessary in order to interpret the acts of the Legislature, does the gentleman think that merely because the power was not given originally by the Constitution that now it should be taken away by the Constitution?

Mr. MORRILL: I do not concede that, because something which is wrong has been repeatedly perpetrated, age gives it correct standing. The Legislature passes laws, and they remain in force for a long while, until they are repealed. Some of them may be unconstitutional, but it never is brought to the courts and they remain in force. On the other hand, city governments do things which are contrary to law, the same as Haverhill for many years contributed toward the support of an armory, the same as other municipalities did. One citizen of Haverhill, who prefers to study the Constitution and laws more than to eat, knew that that was illegal. He brought that to the attention of the proper authorities, and had it decided that it was not proper for the city to contribute, and they were estopped from doing so any longer, although they had been doing it perhaps for a generation or more. That is the way things go. I do not claim that long standing makes a thing right. I do not admit that.

I want the members here to read chapter III on page 58 of the Manual of the General Court, headed Judiciary. In there, under the heading of Judiciary, you do not find this power granted to the courts, and in the articles which I have read it is expressly forbidden to the courts. Why should we try to override our Constitution? If you want to give the courts this power, why not be honest and attempt to amend the Constitution, giving them the power which they now exercise and which we claim they have usurped? Why not do it straight out from the shoulder, and go on record that way? We who do not believe in it will oppose it and vote against it, but if we are in the minority we shall be defeated. The courts, however, will be given a confirmation of their usurped power in that case. Do not try to do it around Robin Hood's barn; do it honestly, if you want to do it.

Mr. PARKER of Lancaster: I apprehend that the range of debate upon document No. 47, which I understand defines the subject of our present consideration, has far outrun the limits of that document or the subject which it properly and in terms embodies. We are not here and now considering whether it is wise or unwise to amend our Constitution by a provision that shall expressly prohibit our Supreme Judicial Court from exercising any jurisdiction over questions which may involve the reversal or annulment of legislation upon the ground of its being in conflict with the constitutional compact. The most casual examination of the document before us reveals that, whatever may be its covert purpose, it does not assail or attack this long and wisely exercised power of the Supreme Judicial Court to hold legislators and other governmental agencies to strict compliance with their constitutional duties. The proposition here involved, as has been pointed out by the delegate in the third division (Mr. Morrill), instead of directly assailing this long exercised power of the Supreme Judicial Court to reverse legislation because held to be unconstitutional, in fact recognizes the power which the court has exercised, but seeks to impair,

abate, stifle the exercise of a power which is recognized. Because this provision embodied in this measure does not raise this other great question that may engage the delegates to this Convention in serious debate when it is before them, it is to be opposed, none the less, because, while recognizing an undoubted judicial authority, it seeks to abate its exercise, and to stifle its expression. Assuming that the court has a power, the proposal intends to prohibit, or in large part prohibit, its exercise. It would compel a court assumed to be vested with authority to deal with the questions submitted to it, and while lawfully proceeding in the responsible exercise of judicial determination and authority, to a certain and inevitable adjudication, to withhold the adjudication, which it was so required to pronounce. This unique and preposterous proposition would compel the court to withhold the declaration of a judgment manifestly required by the law. The proposition would compel a court to stand mute, though prepared to speak its judgment through a majority of its judges, in accordance with our universal practice under which the court when sitting in bank finally declares its decrees. The proposition would forbid a majority of the Supreme Judicial Court, having deliberately and gravely arrived at its conclusion, from giving to the people the benefit or protection of such authoritative expression of the court's decision, because, forsooth, it is argued, that since the determination of all questions of constitutional construction must be matter of judicial opinion, such opinion should have neither force nor expression, if two of the Justices should differ in opinion from their five associates who were in concurrence. Thus the result would be that the opinion of an overwhelming majority of the court would go for naught, and so the opinion of a numerically insignificant minority might finally deprive a citizen of life or liberty.

The proposal, Mr. Chairman, with respect to the lower court, presents an obnoxious anomaly. While it is true, and I think the experience of all the lawyers in this Convention is the same, that lower courts, even a single Justice of the Supreme Judicial Court, even in the case of a manifest, unmistakable statutory disregard of constitutional prohibitions, will assume for the moment and for the deliberations then under consideration that the statute must be considered to be constitutional, invariably, within my experience, the question of constitutionality of a statute passes, upon the presumption that it is constitutional, to the final review of the Supreme Judicial Court, sitting in bank. If, contrary to this experience, with which we all are familiar, a justice of the lower court, even a justice of that great general trial court, the Superior Court, should hold a statute to be unconstitutional, it is open to either party, aggrieved or believing himself to be aggrieved by that adjudication, to take the question on for the final, deliberate view of the Supreme Judicial Court, sitting in bank, where alone it can be finally reviewed.

There may be cases, however, Mr. Chairman, where the constitutionality of a statute upon which a prosecution affecting the liberty, the property, or the good name of an individual is involved. Suppose that to the magistrate trying such case it is immediately apparent that the Legislature had overlooked or disregarded the prohibitions which prescribe its authority and had enacted a statute that unconstitutionally deprived the citizen of his liberties; restrained, by the provisions here proposed, such judge, helpless and in silence, must permit

the outrage to go on, until finally the innocent victim of a law that never ought to have been enacted may be rescued by an appeal, and a delayed though final adjudication of the Supreme Judicial Court. It is true under our law that the Commonwealth may not appeal from an adverse decision in a criminal case, and it might be true that in the hypothetical case that I have suggested a magistrate of a lower court might erroneously adjudge the statute to be unconstitutional yet even then the error would be in favor of life and liberty; but if the statute were unconstitutional, pray what justification is there for enacting this restriction that would compel the trial court to declare a man guilty of crime, when no crime known to the law had been committed?

The question here presented, Mr. Chairman, is simply whether, by this proposed amendment to the Constitution, you shall abate, stifle, the inherent authority of our courts. That is all that is involved here. If there be a question ultimately to be raised, whether or no the power of the court finally reviewing the constitutionality of statutes, shall be revoked or annulled, we will face it when it is presented. It is not presented here. There are those of us who hold that the proposal to deny that authority to the court is a proposal to deny the last safeguard of the lives, liberties and property of our citizens, to deny that there is any compact of government and to conceive that all this boasted civilization, built up upon our scheme of government, means in its last analysis nothing but the power of might and of the rule of numbers. When such provision engages the attention of this Convention, I shall modestly, resolutely and earnestly raise my voice in protest. But that mighty challenge is not raised upon this measure. Shall you stifle the conscience and the power of the court by adopting this preposterous provision now before us?

Mr. Bouvé of Hingham: The argument of the gentleman in the third division (Mr. Carr) in regard to the lower courts should not pass without a reply. The Constitution of Massachusetts and the laws passed in accordance therewith are the supreme law of this Commonwealth, and under that Constitution and laws so passed every judge, whether of the highest tribunal or the lowest, is bound by his oath, and he is bound to administer justice in his court to the best of his ability and knowledge in accordance with that Constitution and the laws passed thereunder, and in no other way. Many litigants in the lower courts have not the means to carry their contention to the Superior Court or to the Supreme Judicial Court. They should have justice absolutely done to them in those tribunals which are nearest to the common people, and to which alone they have the power, financially and otherwise, to resort; and it is the absolute duty of a Justice of the lowest court in the land, if he believes that the Constitution or the laws thereunder require him to give a certain judgment, to so give it, and if he believes the laws are not under the Constitution it is his absolute duty to render justice as he understands it in accordance with the Constitution, — which is over all laws. And I want to say one word more. The Justices of the lower courts are in many instances among the first lawyers in this Commonwealth. They are men of large experience and of high learning and of noble aspirations, and they will render justice in accordance with the laws, very properly presuming and assuming that acts of the Legislature are in accordance with the Constitution, — and until convinced otherwise; but when convinced

otherwise they have no right to render a decision contrary to such conviction, merely because a Legislature has passed a law which they are compelled to believe to be unconstitutional.

Mr. CREAMER: I shall take but a moment. I wish to say in the beginning that I congratulate the delegate from Lancaster (Mr. Parker) upon his reverence for majority rights, even if that reverence is restricted to the majority rights of the judiciary. I hope that when this later matter to which he alludes comes up he will show an equal reverence for the majority rights of all the people. One thing more. I want to say that the reason I consented to introduce resolution No. 47 was because I do believe in the judicial review of statutes enacted by the Legislature. I do not believe in resolution No. 97 nor resolution No. 212. I regard what I have offered as an insurance policy against those other resolutions, an insurance policy that may be necessary in the chaotic times that are bound to come in the next generation. The mere fact that the power of the courts has not been abused materially in the last fifty years does not signify that it may not be abused in the future.

Mr. PARKER: I wish that my learned colleague's policy had been more plainly a life rather than a fire policy.

Mr. BROWN of Brockton: Mr. Chairman, I take the floor because I have been referred to. I respect the fact that I am pledged by my oath and by my conscience to do my duty, and I do not do my duty except by raising my voice here now, that is all. I do not propose to sit here and see questions that later are going to be taken up here disposed of by such an argument as that by the gentleman from Lancaster (Mr. Parker), who undoubtedly is advocating the idea that the people shall not have the last word.

The discussion of the subject was resumed Tuesday, July 31.

Mr. CREAMER of Lynn: I should like to say a few words in regard to both of these resolutions. I understand their purport is the exact opposite of each other. Document No. 47 seeks to establish, although it seeks to limit, the right of judicial review of legislative action. Document No. 97 seeks to abolish that right. I personally wish to discuss very briefly the arguments, or the lack of arguments, of those who on Friday opposed document No. 47. The chief argument made by the gentleman from Boston in the first division in charge of the adverse report (Mr. Montague) seemed to me to be that the exercise of this power would be infrequent, and that the evidence of a desire for a change was small. Is it possible, Mr. Chairman, that the gentleman from Boston is unaware of the prolonged agitation in this country for a long time for a check on the judicial power? The very presence of this next resolution, No. 97, is evidence of the fact that that agitation is taking a very radical form. My resolution was introduced as an offset to that radical form. If tempestuous times are in the offing, and many of us think so, why not shorten sail a little and cast an anchor to windward? That is all my resolution seeks to do.

And then, Mr Chairman, I should like to dwell a few moments on the argument of the gentleman from Southborough (Mr. Choate), or rather, as far as my resolution is concerned, on the assertion of the gentleman from Southborough. If I remember correctly, he said resolution No. 47 would paralyze the Constitution. That is a mouth-filling

phrase and is a horrible accusation, but is it true? Is it paralysis to give two members of the Supreme Judicial Court the same power over questions of law that you give to one juryman over questions of fact? I have a higher opinion of the people fit to sit on the Supreme Judicial Court than that. Is it paralysis, also, to require legislative violation of constitutional rights to be clearly apparent before being proclaimed? I wonder if the gentleman really thinks so. No man here knows better than he does that the measure of the power of the law is not an exact measure, that law is not an exact science, and that it is constantly in the making.

And now let me very reverently approach the inner sanctuary, and consider the able but specious argument of that suave and eloquent gentleman, that distinguished, delightful, but distinctly dangerous delegate from Lancaster (Mr. Parker). [Laughter.] His kaleidoscopic mind is hard to follow. His argument was first noted for the beauty of its diction and the comprehensiveness of his verbs and of his adjectives. I believe I was accused of trying to stifle something. Then his argument suddenly changed and he shocked some of us, staggered some of us, by professing a very sudden and earnest interest in the rights of majorities. It is true that he rather clannishly wanted to confine that principle of majority rule to the members of his own profession, but I suppose that is lawyer-like. At any rate, it seemed to me a hopeful symptom; perhaps in his case, only an unconscious reversion to the ideals of his young manhood but nevertheless hopeful. I know some cynics may say beware of the Greeks bearing gifts, but I would rather think of that other saying: "While the lamp holds out to burn, the vilest sinner may return." Not that I would have you think for a moment that I put the delegate from Lancaster in that category. I simply think that he is a genial but misguided gentleman, the victim of his environment.

And now seriously, Mr. Chairman, I want to urge upon my conservative friends in the committee the value of the policy of insurance my resolution presents to them. It is a conservative resolution. It seeks to conserve, to protect and to establish beyond question the right of judicial review of legislative enactments. The next resolution seeks to do away with that right. It is true my legislation would limit the right but, is it true conservatism to be obstructive? I do not believe it. In connection with this I should like to make a motion to this effect: That this resolution be recommitted to the committee on the Judiciary, with instructions to divide the question and to submit separate reports on each paragraph of the resolution.

(The motion was declared to be out of order.)

Mr. KENNY of Boston: In spite of the fact that my brother on my right (Mr. Creamer) is demanding roll-calls I thoroughly agree with him in regard to resolution No. 47. I come from one of the largest Democratic wards in the city of Boston, made up of laboring people, and we throw our weight with the labor men in this measure. We must adopt some such measure as this or a more socialistic development, the recall of judicial decisions. The need which has given rise to the widespread demand for so-called recall of judicial decisions is the fact that our State courts, by their ultra-conservative interpretation of the police power, are preventing the enforcement of many pro-

gressive industrial and social laws. The courts in declaring such laws unconstitutional invariably do so under the "due process" clause. Neither the due process clause nor the police power has any definite application that is apparent on its face. The interpretation of both is altogether elastic and must be determined by the surrounding circumstances. They are necessarily in conflict with each other and must be determined by the surrounding circumstances. They are necessarily in constant conflict with each other, because the due process clause guards the personal rights, while the police power subordinates the welfare of the individual to the welfare of society as a whole and sacrifices the rights of the individual to the welfare of society.

The foundation principle of all government is that the rights of the individual are subordinate to the rights of society. It is the police power of our government which is designed to accomplish the subordination of the individual to society; and when you deny to the people the right to exercise this power you are placing the right of the individual above the welfare of society and striking at the basic principle of government. This is exactly what the State courts are doing by declaring unconstitutional, as in violation of the due process clause, the laws passed by the Legislature in the exercise of the police power.

But let us get some idea of what this police power is.

The Cyclopedia of Law defines it to be

> that inherent sovereignty which is the right and duty of the government to exercise whenever public policy in a broad sense demands regulations to guard its morals, safety, health and good order, or to insure in any respect such economic conditions as advancing civilization of a high complex character requires.

The Supreme Court of the United States says:

> The police power extends to all the great public needs. It may be put forth in aid of what is sanctioned by usage, or held by the prevailing morality or strong preponderant opinion to be greatly and immediately necessary to the public welfare.

Can you conceive of a government without that power? It is the only living, growing tissue which should be included in our Constitutions. Yet our State courts have refused to recognize the prevailing morality and preponderant opinion of the people. I do not refer especially to Massachusetts courts. These courts have held to precedents, — such as the fellow-servant doctrine, the doctrine of proving due care on the part of the man killed on the railroad track, — precedents established in medieval times, and have placed the individual above the welfare of society. It is for these reasons I support labor's voice in this Convention. I support this resolution No. 47 and in supporting it we do not intend to impeach either the integrity or the ability of the judiciary. The State courts consider themselves bound to follow established precedents and it is right that they should follow precedents. However, it is this which has caused the present dissatisfaction with the judiciary. As Judge Howard of the New York Court of Appeals says:

> Many of the edicts issued today record not the views of judges who sign them but judges who lived before the Renaissance.

We should like to ask those who propose to hold us closely to the present Constitution if they expect us to regulate modern gas and electric corporations by decisions rendered in the days of the tallow candle of Ben Franklin's time. Do you expect us to control our

modern railroads by the laws of the stage coach? In the rapid change of social and economic questions arising from the great industrial progress of this age, laws and precedents are constantly becoming obsolete and their continued enforcement not only obstructs progress but often works injustice.

Let me cite an instance of the decisions of the Illinois Supreme Court. In 1893 the Illinois Legislature, realizing the need, passed an eight-hour law applying to women in certain occupations. The law was designed for the protection of society at large. Yet the Supreme Court of that State in deciding the case of *Richie* v. *The People*, 155 Ill. 98, refused to recognize the police power of the Legislature and declared the law unconstitutional, in violation of the due process clause, and the eighth syllabus stated that "the said Act of 1893 cannot be sustained as a police regulation on the ground that it is designed to protect women, as sex alone will not justify the exercise of the police power."

Thus was the first attempt of Illinois to protect women and prevent her future citizens from paying the toll of modern industrialism set at naught. We cannot dispute the correctness of that Supreme Court's decision. They undoubtedly decided correctly according to the precedents which they had in their books. We cannot blame them, — they were simply not in a position to know the crying need for the health of those poor women and their offspring.

It took sixteen long years to make its cry penetrate the walls of that Supreme Court, and compel that court to recognize the need of such legislation.

In 1909 that same Legislature passed such a law and in the case of *Richie* v. *Wayman* (244 Ill. 509) that same Supreme Court declared this law constitutional, saying in the fifth syllabus:

> . . . the law is not invalid as discriminating between men and women. The physical structure and maternal functions of women, and their consequent inability to perform without effect upon their health and the vigor of their offspring, work which men may do without overexertion, justify the discrimination between men and women.

It took that Supreme Court sixteen years to find that out. Was this justice? Would it not be better, after a Supreme Court has declared such a law unconstitutional upon precedents established in medieval times, to give the people a chance to decide in the light of present conditions?

As my brother from Brockton (Mr. Brown) says, the question of what falls within the police power of the State is not a question of law but a question of fact as to whether a certain law operates for the general welfare of the people.

There is to-day in America a cry welling up from millions of voices calling for adequate social justice. When our State Constitution was adopted the factory system and other products of capital were in an embryonic condition. Now times have changed. But in this century of time our Constitution, except for a few minor amendments, has not changed. Yet our courts are basing many of their opinions which determine the constitutionality of social legislation upon instruments which in their inceptions of social justice are now obsolete. Shrewd corporation attorneys point out technicalities of a minor nature which a judge must follow, and thus the will of the people is circumvented.

The Workmen's Compensation Act of Massachusetts is now practically nullified by decisions of Mr. Justice Crosby and others as regards a travelling salesman and a longshoreman. A travelling salesman in Lowell, who is injured while crossing a street to go from one store to another, is not injured. Mr. Justice Crosby of the Supreme Judicial Court says said traveler was not in the course of his employment or assumed the risk. There are similar decisions along that line. The people are clamoring against these antiquated ideas, these minor technicalities, this blocking of justice. You know that the people who passed these laws know the conditions which make it imperative that these laws be had. Shall the court test these laws by applying to them ideas prevalent in the past or present?

My brother in the second division (Mr. Montague) speaking of Massachusetts, said there were few statutes declared unconstitutional. I want to say, Mr. Chairman, that from 1902 to 1908 there were 468 statutes declared unconstitutional in the United States, the greater part of these being laws for more adequate social justice. Such are the conditions with which we, the people of the United States, are confronted to-day.

When our courts were established they were meant to interpret the law, but to-day, through their ability to declare laws unconstitutional they have become virtually a law-making body. We do not believe that the power to declare laws unconstitutional should be taken from them but that they should be limited or restricted in their use of this power.

Dr. William Draper Lewis, the eminent jurist and dean of the Pennsylvania State School, says:

> We should not assume that a court was wrong in interpretation of the Constitution. We should assume it was right. But we should assume that the people have a right to know whether they want that particular enactment as a part of their laws.

When the existing laws fail to meet the conditions, there is need of a final court of appeals and that court should be the people. In the case of *Ives* v. *South Buffalo Railway Co.* [N. Y.], the New York Court of Appeals held a workmen's compensation act unconstitutional. But the need for such a law and the popular demand being so insistent, it was changed.

Now Alexander Hamilton has been quoted by my brother behind me in the same division (Mr. Merriam) and I want to quote from Alexander Hamilton regarding this Republican form of government. We feel that no statement as to the essentials of republican government could be more acceptable than that of Alexander Hamilton:

> The people are the only legitimate fountain of power; from them all government is derived. It seems strictly consonant with the republican theory to recur to the same original authority, not only whenever it may be necessary to enlarge, diminish or new-model the powers of government, but also whenever any one of the departments may commit encroachments on the charted authority of the others; for how are the encroachments of the stronger to be prevented, or the wrongs of the weaker to be redressed, without an appeal to the people themselves, who, as grantors of the powers of government, can also declare its true meaning and enforce its observance.

Even the New York Times, a paper famous for its non-progressive views, has said:

> That the definite will of the majority of the voters, deliberately formed, consistently adhered to, and fairly expressed, should determine the treatment of public affairs in all branches, even the judiciary, is the fundamental principle of democracy.

Some courts have usurped the power to declare laws unconstitutional by changing the wording of a law as passed by the Legislature. Take, for instance, the case of *Adair* v. *The People*, or the Compulsory Arbitration Act in Illinois. The Supreme Court held that a single paragraph in that act was unconstitutional and read it out of the law. This paragraph was the vital paragraph of the entire law; without it the law was entirely inoperative.

Another example, — that of the New York street car transfer case. The street car systems in New York were owned by the same holding company, but each line was run independently from the others, so that it was necessary to pay a fare every time one wanted a transfer. The Legislature passed an act forcing the companies to give transfers and provided a fine of $50 for *every* violation of the act. A test case was brought up, and in deciding the case, the court held that the Legislature meant to say for *each* violation of the act. Hence, on account of the excessive cost of bringing suit, it made the act inoperative, and, in reality, made the law unconstitutional.

Another case, — a Federal case, that of the Sherman Anti-Trust Act. Up to April, 1911, it was illegal for any contract or combination in restraint of trade to exist in the United States. Since that time the court has held that only those combinations working an unreasonable or undue restraint of trade were intended to be affected by the law. The Supreme Court has made itself the judge as to whether there was undue or unreasonable restraint of trade.

A few years ago the Standard Oil Company was fined $29,000,000. The fine never was collected. It was clearly proved that the company was guilty, but its immense influence with the higher court made punishment impossible.

Oglesby, a Missouri Pacific brakeman, lost his legs in a wreck in Missouri. He carried his case to the State Supreme Court, winning in the lower courts. When he lost he was refused a new trial. But when the railroad company lost it was granted two new trials. Oglesby naturally lost, but the people of Missouri had good stuff in them and knowing he had not received a square deal, elected him to a State office with a lucrative salary.

I also cite the Bakeshop Case of New York, or *The People* v. *Lochner*, that was referred to by my brother from Brockton (Mr. Brown). The law involved in this case provided that the bakers of New York could work only ten hours a day and all underground bake-ovens should be abolished. But when the interests came to bring a case to test the constitutionality of the act, they went out to Utica, N. Y., a small city, and they found a sanitary bakeshop in which the owner and his sons worked. The bake-oven was above the ground; but upon this framed-up and unfair case the act was declared unconstitutional. Out of the twenty-two judges who passed upon this case, twelve held that the law was constitutional, while only ten, a minority, held that the law was unconstitutional. The minority decided the case.

The Jacobs or Tenement-House Case cited by my brother from Brockton (Mr. Brown), is another typical example of a bad court decision. The New York Legislature passed an act to regulate the manufacture of tobacco in the home. The bill had the support of every labor-union and of all social settlement workers. This act was declared unconstitutional because it interfered with the sanctity of

the home. Jacobs lived in a seven-room apartment, in one room of which he maintained a cigar factory. The Jacobs case decision retarded all tenement-house reform for the last fifteen years.

When the Supreme Court of the United States held that the Fugitive Slave Law was constitutional, Massachusetts was not afraid to criticize the court. It cost this country millions of dollars and hundreds of thousands of lives in a civil war to rectify that usurpation by the courts. The State of Kansas has lost in revenue a hundred thousand dollars a year because of one decision in the Western Union Telegraph Case.

In April, 1895, the Supreme Court declared the Income Tax Law was constitutional by a vote of five to four. A month later, May, 1895, Justice Shiras changed his mind, and by changing his mind he changed the decision and thus made the Income Tax Law unconstitutional.

In order that our Constitution may not be degraded it must have elasticity. It must be a ready tool for times of stress which always come to every nation.

Let us refer to Justice Holmes, our revered judge from Massachusetts, probably the sanest judge on the Supreme Court of the United States. He says in a unanimous decision of the Supreme Court in 1908, in defining the police power:

> The police power extends to all public needs. It may be put forth in what is sanctioned by usage or held by the strong and preponderant opinion to be greatly and immediately necessary to the public welfare.

Under this power the Legislatures and Constitutional Conventions may pass law for social betterment. Let us put this matter up to the ballot-box. This law then will be constitutional because it will be favored by the strong and preponderant opinion.

Some people would prefer to perish by precedent rather than die by innovation, but I believe if Massachusetts wants to be again the pioneer State of the Union she should liberalize her Constitution.

Mr. LEONARD of Boston: The gentleman from Lynn in the third division (Mr. Creamer) has asked the question as to why members who were in favor of a unanimous decision of a jury on questions of fact are in favor of a less than unanimous decision of a court on questions of law, and he has endeavored to point out an inconsistency. Personally I was one of the remnant who voted for a less than unanimous decision by the jury. I am also in favor of a majority decision of the court, so if there is any merit in the question of consistency which the gentleman raises, certainly I am free from criticism as to that. And although it has seemed remarkable that so many of the delegates who were favorable to unanimous decisions of the jury on fact also hold that our liberties are at stake unless we have a majority decision on a question of law, and *vice versa*, as many who favored a less than unanimous verdict by the juries are insistent now on a unanimous decision by the courts, yet I think there are very grave distinctions and one of the distinctions is this: We have got to have a final decision somewhere, and if these measures involved not merely a question of constitutional law but involved all questions of law, we would see very clearly that the majority of the Supreme Judicial Court have got to decide some questions of law. It is important that questions of law be decided rightly; it is of equal importance that there be a final

decision. Whereas we may be able to get another jury, where one jury disagrees on questions of fact, it is difficult to get another Supreme Judicial Court in Massachusetts to decide questions of law. I think that reasoning will apply also to the question of determining the constitutionality of a statute. Because while a majority of the court under the gentleman's resolution could not render a decision that an act was unconstitutional, the act would remain, and that majority of the court that did not believe in the constitutionality of the act would be forced to construe and interpret it for the people as a valid act; and I think we would find that they were on very swampy ground at times and that some of the value of our Massachusetts precedents would lose their force in this and in other States.

Now, gentlemen, I wish to give a little illustration. The chairman has ruled that these several measures are under discussion. They are all varieties of the same species. They are different in form and they are different in their coloring, but they all go pretty much to the same thing. And I should like to bring an illustration to bear upon the members of the committee. My illustration will not take long. It does not go back to Magna Carta or to any of the great and important early decisions. I think the barons who wrested the privileges from King John at Runnymede are entitled to a little furlough at this time. But I should like to go back not to 1215 but to the year 1915 and ask the members of the Convention to consider what I have to say in connection with document No. 97.

Suppose document No. 97 had been a part of the Constitution at the time the act I am about to refer to was enacted by the General Court, namely, chapter 292 of the General Acts of 1915. That is a Mechanics' Lien Act. I have no doubt that some of the attorneys in the Convention have heard of the Mechanics' Lien Act of 1915. It contained many wonderful and weird provisions. When the date for its enforcement came, which was January 1, 1916, the General Court of that year found it was necessary to enact two acts, chapters 163 and 306 of the General Acts of 1916, to remedy the errors and the defects of the Act of 1915. It was impossible on January 1, 1916, for any man who had a mechanic's lien in the courts to find any way whereby he could enforce his lien. There was no possible way of enforcing it.

Now let us take an example. Let me suppose that the gentleman from Brockton (Mr. Brown), who is the father of one of these resolutions, after the passage of this Act of 1915 and after a Constitutional Convention had decided that no court could upset a law on constitutional or any other grounds, — let us suppose that he had advanced a sum of money, something out of his substance and capital, for construction of some building for educational or business purposes in the city of Brockton, and had taken a mortgage for it in due course and that that mortgage was duly recorded in the Registry of Deeds. Well, work was undertaken. By the time the building neared its completion there were difficulties, as sometimes happens. The sheriff was around the corner and there were altercations between the workmen and the employers, and the men who furnished the materials were not being paid, and as a result there were several liens put upon that building. Being a naturally careful and prudent man, the gentleman from Brockton would then go and consult his attorney and see what

his rights were. The attorney would say: "You have got your mortgage and it is on record and you are all right, you are perfectly safe; but the Legislature is constantly changing the Mechanics' Lien Law and we will look up and see what they have done this year." And his counsel reads until he comes to section 6 of the Acts of 1915 and he reads the following sentence, — this is only one of the minor discrepancies of the act:

> SECTION 6. No lien . . . shall avail as against a mortgage . . . unless the work or labor performed is in the erection, alteration, repair or removal of a building or structure which erection, alteration, repair or removal was actually begun prior to the recording of the *mortgagee* —

"prior to the recording of the *mortgagee*." "Why, what does this mean?" "Why," counsel would say, "it would seem as though you have got to go on record." "How am I going to do that?" "I don't know, but there is the law. All your money is in this building and you want to protect yourself and the Legislature is not in session; I don't see what you can do except to record yourself."

So suppose the gentleman goes up to the registry in his shire town and says: "Here is the Mechanics' Lien Law and it says I have got to be recorded." The register of deeds would probably say: "My appropriation only allows me to record legal documents. I make copies of legal documents and put them in the books and index them, but how can I make a copy of the gentleman from Brockton? Is that possible? I can't copy a human document. I don't see what there is to do if you want to protect your funds but for you to remain here permanently on record."

Now, gentlemen, that is the situation. Read the section of the act and read the proposed amendment. And then, naturally, as the other mortgagees of the county began to learn about the condition of affairs they would want to protect their rights and I think, gentlemen of the Convention, you can soon realize what a beautiful collection of mortgagees there would be assembled in the registry of deeds of the county. We can see also something of the manner in which the gentleman might address those mortgagees and I think he probably would say to them, in a style with which we are familiar, that if there ever was a bunch of "two-footed calves" that had enacted foolish provisions into the Constitution it was the assembly that required that no justice could say that any act passed by the Legislature, no matter what its defect was, could be declared unconstitutional or void on any ground.

Now gentlemen, I do not think that I have said this in a particularly facetious manner. I have not mentioned —

Mr. BROWN (interrupting): I should like to know if that gentleman who made that assertion as to the Legislature is also aware how largely his own profession, whose duty it was to write correct laws, were in force in that Legislature?

Mr. LEONARD: Certainly; I am absolutely aware of that. Of course lawyers make mistakes, but you have to rely on judges, even though sometimes they are the judges of the lower courts, to detect mistakes and, within the limits of their jurisdiction, to correct errors. I think the judge of the lower court in a general way resembles the family doctor, as the Justice of the Supreme Judicial Court resembles the specialist, and we have got to admit that sometimes the lower court justice is capable of reaching and arriving at a sound decision. This

error I have referred to was due to the addition of the letter "e" in the word "mortgage" in the drafting of the act.

Mr. BROWN: I should like to ask the gentleman this question: Does a lawyer become any the less incapable of making a mistake when he is on the bench than he does when he is in the Legislature? Is not the argument he is making a reason why we should restrict the Supreme Judicial Court to a verdict that is more unanimous rather than why we should let it remain as it is?

Mr. LEONARD: Absolutely true. The judges do make mistakes on the bench and our legal system has provided means of appeal therefrom. But does the gentleman mean to say that because there are lawyers in the Legislature when matters are considered in there that no mistakes are made in the Legislature, but that they may occur in the courts where the lawyers are on the bench? Is the lawyer in the General Court less liable to error than the lawyer acting as a judge in the deliberations of the court of law?

Mr. SULLIVAN of Lawrence: I understand the gentleman from Boston uses this illustration as an argument that the judges ought to retain their power to declare statutes unconstitutional. I should like to ask him who corrected the mistake that he refers to now, the court or the Legislature.

Mr. LEONARD: The courts were powerless on other grounds than those I have mentioned to enforce this Act of 1915. As far as the legislative act went they did not know what to do. There was nothing they could do, and the only thing to be done was to go to the Legislature and ask the Legislature to repeal the bungling job they had done the year previous and to enact a law in correct form.

Mr. SULLIVAN: I should like to ask the gentleman, then, if the instance that he cites is an argument that the Legislature should need judicial supervision.

Mr. LEONARD: I cannot quite catch the connection of the gentleman's question. I certainly do not believe the Legislature needs judicial supervision. I am making no argument of that sort; I am just urging this resolution.

Mr. CREAMER moved that the Committee of the Whole recommend to the Convention that this resolution (No. 47) be recommitted to the committee on Judiciary with a view to a division of the question and a separate report on each paragraph.

Mr. BROWN of Brockton: I cannot feel otherwise than somewhat depressed. It is something of a jump from the subject we had last (capital punishment) to this, especially when I have heard a minister of the gospel expound God as he understands Him. I say that it is somewhat hard for me to immediately take up my subject when I have listened so intently to hear expounded here the God of love as He is understood by a minister of the gospel. I am going to come as quickly as I can to my subject.

I am satisfied if the motion means that the resolution is going to the Judiciary so that the Judiciary can present it in a different form. The subject-matter of this resolution, and also of one which I had the honor to introduce, is the idea that the verdict of the judiciary in interpreting or expounding the constitutionality of laws, and particularly those dealing with social questions, or questions which relate to the well-being of man, shall be made substantially unanimous rather

than being left to a majority of a divided court, as it is at present. The subject grew into discussion as far as I am concerned because I listened so intently to the debate of the members of the legal profession. I learned much. I heard them declare for a unanimous verdict in jury trials. I voted with the majority. It is in my mind that the Supreme Judicial Court as it is constituted should follow that general rule; that it should be unanimous in its verdicts on such questions. I question if the gentleman from Framingham (Mr. Merriam) was justified in his inference that I was trying to make the Legislature the supreme branch. Certainly he could not think that I had lost sight of the fact that all power was in the people. I have enunciated that proposition frequently. I certainly do know that they are coördinate branches. I certainly do know, as was shown by the gentleman from Haverhill (Mr. Morrill), that the intention of the Constitution was to balance one with the other; it was to make them coördinate branches, and, as far as possible, to define the line of demarcation. I am against the idea of unduly enlarging the power of any one of the coördinate branches. I see that it is the tendency of the judiciary gradually to enlarge its power as it interprets the Constitution.

I wonder what the gentleman who so eloquently has talked to us on capital punishment would say if somebody should rise and say that he thought that inasmuch as some very, very able men had expounded the Bible, had interpreted it, had told what the original author intended to say when he wrote the Bible, that therefore, because they had expounded it, their expositions should become a part of the Bible. We should be up against it along those lines. And it is along those lines that I am objecting to the expositions of the Constitution by the judiciary. It is not necessary for the gentleman from Wellesley (Mr. Pillsbury) to think that I am attacking the conscience of the Supreme Judicial Court. The conscience of any man is either square in his breast, so that every time it turns it hurts him, or else it has turned so often that corners are knocked off and are round. If the corners are round it does not hurt him. Each and every one of us is liable to that experience. So, therefore, I am not attacking the judiciary, and if you say the discussion has broadened it has broadened only because of the fact that we undertook to trace where they got that power.

If you are going to follow it at all down through the line of the early fathers you will find each and every one of them feeling that the Massachusetts Court is to interpret the Constitution of Massachusetts. What does every legislator do when he takes his seat, lawyers as well as the rest? He takes an oath to support the Constitution. So does His Excellency. Does anybody undertake to say that they have not closely in mind what the Constitution of Massachusetts is when they are enacting laws? They do have it in mind. Some one may have reason to call their attention to the fact that it is unconstitutional, yet nevertheless they have proceeded, and the lawyers without any question, — I know they would do their duty, — have looked up precedent decisions and have determined their course in voting upon the question of constitutionality. They enact laws on the social welfare of the people designed to improve it. As soon as they pass them the judiciary veto them. If they cannot base the veto on the police power

they base it on the right of contract. If the law undertakes to protect the laborer from being injured, then the manufacturer puts up a Federal case that his property is attacked; then very easily do the judiciary find that it is taking his property without due process of law. If we intend to protect labor in some such way for the common good, then the court says: "You have taken away the right of the poor laborer to contract."

If the Judiciary Committee will take up this question on the line of criticism made by the honorable member to whom I referred in my first address, Sherman Whipple, I will support it; but this is the only place you ever can make any such change. If you cannot change it now when are you going to change it? It is not usurpation as the gentleman from Somerville said. It is not usurpation. It is using a little power now, and then a little more power and finally reaching the point where it creates complaint and discussion.

A gentleman says: "Why, if you demand unanimity, except one or two, we will lose all the valued decisions which should be handed down from the judiciary." No, I say not. If one member says it is constitutional, and thereby stands with the Legislature it makes it constitutional; then the other six may give opinions telling why it is not constitutional. I hold that if proof was thus produced that an act that had been passed by the Legislature was unconstitutional the Legislature itself would reverse its own action especially if the act was in derogation of the rights of any individual.

When I was talking so loudly as I talked here on Friday, and was saying: "Wake up, members, on the initiative and referendum, I want that explained," my idea was this: I did not wish this Convention to grow gradually by what it fed on. I did not wish to see it grow more and more conservative. I did not wish to see it take the attitude that because the Constitution is as it is now, it must therefore continue in that way. I tried to declare that while we are governed by the Constitution, while we all support it, it is our duty here to revise that Constitution if it is necessary. We should revise it upon the merits of the proposition to revise it. The argument has been that the judges had this or that power, and it must not be changed. We have demonstrated that this Convention is made up of positive men. We should either sit and debate this question or send it back to the Judiciary Committee. The gentleman from Lynn suggested changing the conditions so that the people will get rid of the idea that their rights are not being protected in the courts. Please take notice, if I may interject it here, of the labor situation. Please remember that there is a very, very, large body of men who try to be fair, to be conservative, to be honest. Remember also that there is a different body of men endeavoring to lead the labor movement and rush it we know not where. It is said that we are not properly protected by the judiciary. It is said that the judiciary are continually unmaking the will of the people after the will of the people has been expressed clearly by the Legislature. That is a danger that warrants the taking of all the time that has been taken on this resolution.

Mr. BAUER of Lynn: In approaching this resolution, No. 47, and the very excellent reference which the delegate from Lynn recommends be made of it, I should like to discuss it from the standpoint, not of a lawyer, not of a laboring man, but from the standpoint of a business

man who has been a close student of government matters for some thirty years. In that effort I have had asked me many times by men of great legal training what I thought a Supreme Judicial Court decision would be on certain questions; and after a research of constitutional decisions by the Supreme Court in very many States of this Union I have come to the conclusion that the Supreme Court decision on a constitutional matter is governed almost entirely by the personal, political and social environment of each one of the judges of the Supreme Court at the time the decision was made. That has been brought home to me after a great deal of research of Supreme Court decisions on constitutional matters in very many States, and it has brought to my mind the fact that, after all, the Supreme Court of any State is only a human tribunal, subject to the influences and the environment to which all human beings are subject. For that reason I believe resolution No. 47 has a great deal of merit. It involves two very important questions. To my mind they should be decided separately. I trust that the motion for a reference on the part of the delegate from Lynn to the Judiciary Committee will prevail.

Mr. SULLIVAN of Salem: The committee on Judiciary did consider both phases of the question and the committee on Judiciary was unanimous in its recommendation that the resolution ought not to pass. If it is referred back to the committee on Judiciary, I think I am interpreting the sense and the temper of the committee correctly in saying that about all that committee can do under the motion of the gentleman from Lynn in deciding the question will be to bring in two separate reports, saying ought not to pass on each phase of the question, that is, the first and second paragraphs. Therefore I hope that the time of the Convention will not be wasted by recommitting this matter to the committee on the Judiciary.

Mr. ANDERSON of Brookline: I do not think that resolution No. 47, or No. 97, or No. 212, in the form in which it is submitted, ought to pass. I do think that each of those resolutions attempts to strike at a really important matter which calls for careful consideration and the submission of an amendment of the Constitution to the people. I am satisfied, after a careful examination of the question, extending over a considerable number of years, dealing with various aspects of the constitutional power of the courts to declare measures unconstitutional, that that power ought to be more narrowly limited than it has been limited heretofore. I believe that whatever the arguments may be, historical or other, in favor of leaving the ultimate decision to the legislative branch, the decision to leave it to the judicial branch was a correct decision, and that no other branch of the government would have given us as real constitutional government as the judicial branch has given us. But I remember that more than twenty years ago, when the learned member of this Convention now sitting for Wellesley (Mr. Pillsbury) was Attorney-General of the Commonwealth, that in his report as Attorney-General he even then called attention to the increasing number of decisions by a mere majority or much less than the full court, holding the deliberate acts of the Legislature, approved by the Governor, invalid on constitutional grounds. If the learned delegate was at all correct, and he always is correct, in the statements made in his report as Attorney-General twenty odd years ago, that there was an increasing and undesirable tendency on the

part of the courts to nullify the deliberate acts of the Legislature, *a fortiori* that statement might be made to-day; for I apprehend, — I have not the statistics before me, — that there have been ten times as many decisions of the courts by less than all of the court, and sometimes by a bare majority, holding statutes unconstitutional, within the past twenty years as there were in the period reviewed by the learned Attorney-General some twenty odd years ago. It has become an abuse, which has increased, and justly increased, the antagonism toward the courts, and which threatens to destroy, or at any rate to injure, that popular confidence that we ought to have in our courts. The Supreme Court of the United States will not recover in this generation the prestige that was destroyed by the five to four income tax decision grounded upon the change of mind of a very elderly gentleman who had had great difficulty in making up his mind. It was a scandal that the taxing power of this great Nation should require an amendment to the Constitution to undo the error brought into our constitutional law by the change of mind of one out of nine Justices of the Supreme Court. It is inconsistent with a proper regard for the oath of office of the members of Congress, (if we are dealing with National matters,) of the Senate and of the chief executive, each one of whom, as has been stated here this afternoon, is as much bound by his oath of office to enact only constitutional legislation as is the Supreme Court bound to declare and enforce only constitutional law.

When I say that, I retract no part of what I said a moment ago, — that I think the final decision of that difficult question was well left to the judiciary. There are certain advantages in testing the constitutionality of law that the judiciary have when the law is put into actual operation, — they have, for instance, the benefit of the argument of counsel, — that do not accrue in a legislative tribunal.

And so without reviewing the very many aspects of this question that I have been called upon during the past ten or fifteen years to review in various addresses that I have attempted to give, or going over the field of so-called police regulation law, I think this Convention ought to submit to the people something substantially to this effect: That no law should be declared unconstitutional except by the court of last resort, and then only by not less than, say, two-thirds of the Justices. [Applause.] That would amount in Massachusetts to five, leaving two on the other side. It would require six in the Supreme Court of the United States, assuming for the moment that by analogy there should be a like amendment of the Constitution of the United States. It would relieve the courts of the odium, — and it is an odium, and a just odium, — of having the deliberate act of the Legislature, and of the executive approving it, upset by the decision of a single man. Five to four decisions in the Supreme Court of the United States are, as I said, a scandal. Four to three decisions in Massachusetts I am glad to say have been rarely, if ever, made, and I hope never will be made, but if they ever are made they will constitute a scandal.

I want to add one other thing. Massachusetts has less call to complain of her judiciary than we have cause to complain of the Supreme Court of the United States, and than they have cause to complain in Illinois, Missouri and New York. I am not sure that there may not be other States in our class, but some years ago I made a fairly care-

ful examination, for the purpose of preparing an argument, of a lot of the decisions in those courts that are elected by popular election, and I found that they had been far less responsive to what we call modern ideas, had been far more arrogant in the assertion of judicial power as being superior to legislative power, than in Massachusetts. In this connection it is not unfit to pay a word of tribute to a former Chief Justice of this Commonwealth, now a Justice of the Supreme Court in Washington. I think it was the unusual sanity of the views of Justice Oliver Wendell Holmes which went far in our Supreme Judicial Court to prevent it at one time, some years ago, from yielding to a tendency which seemed almost the prevailing tendency in various States of the country. He always asserted from the time of his dissenting opinion in *Commonwealth* v. *Perry* in 1891 that it was for the Legislature to determine those questions, and that it was none of the court's business, unless the Legislature obviously, clearly, encroached upon some of the fundamental rights guaranteed by the Constitution. But I regret to say there have been other, much less learned men, of entirely different environment, perhaps growing up in an environment from which you might expect more democratic proclivities, who have gone to the extreme in misconstruing the great bills of rights, the 14th amendment to the Constitution of the United States and the due process clause, — as imbedding in our own system of law their own somewhat antiquated ideas of economic and sociological questions. They have constituted themselves in effect a fourth legislative tribunal.

Now, I say that ought to be stopped. In working out the machinery to stop it my own notion is this, — I am not at all dogmatic, — to limit the power to the court of last resort, and then to provide that there should be a vote of not less than two-thirds of all the judges of that court, — would be the safest middle ground on which to secure both the essential guarantees of the Constitution and the right to move forward.

Mr. MONTAGUE: As a member of the committee on the Judiciary, having nominal charge of this matter, No. 47, I hope that it will not be recommitted to the committee on the Judiciary. As the gentleman from Salem (Mr. Sullivan), a member of the committee, has stated, the committee on the Judiciary did give this matter very careful consideration. They considered both aspects of this matter, No. 47, and they were unanimous, not only without a dissenting vote, but without in the committee a dissenting voice, that neither of these propositions should be favorably reported. We had before our committee the gentleman from Brockton (Mr. Brown), who spoke there as he has here and who always speaks very interestingly, but who did not speak to the committee on the Judiciary convincingly. I venture to say, Mr. Chairman, that if this matter should be referred again to the committee on Judiciary it simply would result in delay, and that the same report would come back here for your consideration.

This matter has been debated almost two whole days. It seems to me that, although we continue to have light every time a member speaks, as we have just had an excellent illustration, we have had almost as much information as we are likely to obtain, and it seems to me we can deal with it better if we proceed in the usual and regular order to deal with it now.

There is one thing to be noticed, and that is that in the strong arguments which have been made in favor of the proposition it is not Massachusetts that is referred to, it is the United States Supreme Court, it is Illinois, it is New York, it is North Dakota, it is Arizona, it is some other place besides the Commonwealth of Massachusetts. Now, Mr. Chairman, the committee on the Judiciary did not feel that we had any jurisdiction or that it was our business to interfere with or even to pay any attention to what was occurring in those other States. It seemed to us that this matter, like all these matters, should be decided with reference to the Commonwealth of Massachusetts, what we have done here in the last 137 years and what we are likely to do here in the future.

As far as the reports go, there has not been a dissenting opinion filed in our Supreme Judicial Court on a matter that has been declared unconstitutional since 1892, — that is, 25 years ago. There has not been a majority opinion, so far as the reports filed indicate, since 1892. There were in that year both a dissenting opinion and also a majority opinion, and there was one the year before. It looks to me, and it looked to the committee on the Judiciary, as if, taking Massachusetts, our own Commonwealth, considering the fact that in all the reports from 1804 to 1916, inclusive, only 59 statutes, parts of statutes, or resolves have been declared unconstitutional in this Commonwealth, an average of one every two years and an average of the acts and resolves of the Legislature one in about 850 acts and resolves passed, we had better leave well enough alone. I was surprised at that showing, because I have been a member of the Legislature and I am surprised and gratified that it has not made a mistake of this kind more than once in 850 times. It did seem to the committee on Judiciary that, taking the Commonwealth of Massachusetts, in view of what our judiciary had done and is doing, we had better let them keep on rendering the same splendid service and in the same way as they have heretofore done.

Mr. Balch of Boston: What my friend the learned member from Brookline (Mr. Anderson) has said has struck a sympathetic chord in myself, yet I rise to make an argument on the other side, for I draw a different conclusion from premises which are in part the same. I call your attention, gentlemen of the Convention, to the fact that this debate has concerned itself almost wholly with one narrow aspect of the question of the relation of our courts to constitutional law. Let us be frank with one another. Let those on my side who agree with me be frank. There is, indeed, a grave question here; and when the learned professor of constitutional law in the Harvard Law School tried hard to teach me constitutional law twenty years ago he was aware of it and never scrupled to point out to his classes in the most forcible terms: "It is a dangerous power for courts to wield." He also never scrupled to point out with equal justice that it is an absolutely *indispensable* power to our fundamental liberties. The trouble arose at one point and practically at one point only. Some twenty or thirty years ago a new theory was given impetus in this country, the theory which can be best defined as that of the superior value of human rights as contrasted with property rights; the abandonment of the old doctrine of *laissez faire* and the partial substitution therefor of the doctrine which some, hostile minded toward it, characterized as

paternalism. This conflict of new theories drew into the courts great social and political questions which would better have been kept out of them, if they *could* have been kept out. Conflict most typically arose when hours of labor and the like were regulated and the regulations were claimed to contravene the Federal constitutional provisions for liberty of contract and the like. Then it was for the courts to say whether or not they could uphold the paternalistic legislation, so called, under the police power, as coming under the emergency power for the protection of health and the like, and therefore not subject to the provision of the Constitution for the sacredness of the right of free contract. There was a time when the whole situation thus arising was charged with political thunder and lightning; when a very dangerous crisis confronted the courts; when there was a rapidly growing jealousy of their power as interpreters of the Constitution; when there was a long series of decisions which had thrown out great pieces of constructive legislation to the extreme irritation of large sections of the population. But, Mr. Chairman, within the last four or five years I submit that a great change for the better has come over that situation. Men like Mr. Justice Brandeis have taught us of the bar how these great questions should be treated, how they should be brought home to the members of our courts. Even where the courts were fairly conservative we have been shown how they could be convinced that legislation limiting the hours of labor, not only for women and children but even for men, could come under the police power. We have been shown how the attorney with sufficient ability and patience to work up the case properly can carry the court with him if he has merit on his side. The number of cases where great constructive legislation is overthrown by the courts is diminishing, and is diminishing fast. Furthermore, as Mr. Montague well said, that trouble, serious as it was, never had anything like as serious a nature in this Commonwealth as it had in certain Commonwealths which had elective judges and in our United States Supreme Court, — a happy fact partly due, as both the gentlemen who preceded me have pointed out, to our own Mr. Justice Holmes, who has done much the same service for the bench that Mr. Justice Brandeis performed for the bar in showing from what angle these great judicial questions should be judicially reviewed.

Now, Mr. Chairman, this debate has been almost wholly confined to that one aspect of the matter, to so-called social welfare legislation.

Have we sufficiently considered, all of us, that the prime constitutional function of the courts is not to pass on those social welfare matters under the police power, but to safeguard our fundamental rights, such as our right not to be put under military law in time of peace, and not to have soldiers quartered upon us save in accordance with the Constitution; our right not to have free speech and liberty of assembly taken away from us, except under the Constitution and the similar intimate personal liberties which, since Magna Carta, have been our shield against tyranny? Suppose, Mr. Chairman, that in the hurly burly of this war and the excitement which may attend its closing hours, we should have some Governor who so misconstrued his mandate from the people as to declare labor under martial law while the Legislature was not sitting and proceed to the measures which necessarily would flow from such a military order; then no one

would be quicker to insist that the court of first instance should declare the usurpation unconstitutional than some of the men who now fancy that they would like to see that decision delayed until the Supreme Judicial Court could be assembled and pass upon it. I take it, if the Governor or the General Court violated their constitutional duty in any such manner, no one would be so ready as my brother, the learned member from Brookline (Mr. Anderson), to see to it that the court of first instance righted that wrong efficiently and immediately, without waiting for the court of last resort. And I submit that in concentrating our attention exclusively on one narrow aspect of the constitutional aspects of the work of our courts, the gentleman has caused us dangerously to lose sight of the broader and more truly typical aspects of that work, — aspects which absolutely require that the courts should retain the power of giving *prompt*, as well as full, protection to our fundamental liberties.

Mr. MERRIAM of Framingham: Although in behalf of the committee I have spoken once on this question, I desire to add a few words at this time in view of the latitude the debate has taken.

I cannot agree to the statement made recently by the gentleman from Lynn that as he has studied our history the decisions of our judges have been influenced largely by social associations. I want to call to the mind of that gentleman, Mr. Chairman, and to the mind of this Convention, the action of our Supreme Court recently in Washington in declaring unconstitutional the statutes and provisions made by our southern States for the purpose of depriving many of the common people of the right to vote. In many of these States laws were passed that no one could vote, although it might be that he was entitled to vote, unless in addition to other qualifications his grandfather could have voted under the same qualifications. Mr. Chairman, those laws in the course of time came before the Supreme Court of the United States for final construction, and it was a southern man, the Chief Justice of the Supreme Court, who pronounced the decision of the court to be a subterfuge, to be an infringement upon the rights of the humble people, in violation of the provisions of the Constitution and as such unconstitutional and void.

The question before us, however, does not concern the Federal jurisdiction as much as it concerns the Commonwealth of Massachusetts. I cannot conceive of anything touching our courts more lamentable than to have any doubt remain in the minds of our people as to the fate of this proposition.

The other day we were asked what was the source of the constitutional authority of our courts to set aside the statutes under our Constitution. That question was answered early in our history, when it was shown that the courts were subject to the Constitution. The Constitution was made the supreme law of the land. In our Federal jurisdiction it is the supreme law of the United States. The Constitution of Massachusetts in our jurisdiction here is the supreme law of the Commonwealth, and our courts must recognize it. It is their fundamental duty. They cannot decline to see it. Usually as they have exercised it it has been in the interest of the rights of the individual, in maintaining rights of equality under the Constitution against infringement. I have here an article recently written upon the subject, reviewing the authorities and concluding with this statement:

They are still bound, if the Constitution is an expression of fundamental law, to determine judicially the validity of acts of Congress under that law. No other result is logically possible, unless either the Constitution is disregarded as law or Congress is made the highest court for its interpretation. In either case, the fundamental law which we now have would disappear.[1]

In order that that fundamental law may continue to be fundamental in our Commonwealth, I feel that we ought to vote upon this proposition in the most decisive manner, so that the power of our courts to enforce the provisions of our Constitution may be maintained.

Mr. HART of Cambridge: This is one of the most satisfactory days of this Convention, because we find ourselves a "con-vention." A body of men is now come together, not simply sitting in separate committees for the preparation of material, but actually discussing fundamental questions; and hardly any question that will come before this Convention is more serious for the people of the Commonwealth than that of the status of the judiciary.

I own to great enlightenment from the speeches made from different aspects and upon different sides of this question, and hesitate to discuss a somewhat different phase of the question in the midst of so many men of legal training, accustomed to practice before the courts of this Commonwealth and elsewhere. I want to speak as a plain citizen, somewhat acquainted with laws and Constitutions, but not adept in the practice of the courts. I speak as a man of the people, and the men of the people feel that somehow or other, without their being consulted, the people of the United States, including Massachusetts, have set one of the three coequal departments of government upon a pedestal; that the judiciary department in this State and in the United States is recognized as having powers and prerogatives different from those of the other representatives of the people.

I affirm on the contrary that there is no sacred department in this Commonwealth; there is no sacred body of public servants; they all spring precisely from the same origin, namely, from the will of the people of Massachusetts, and it is not the will of that people, and it never has been their will, that they should create three departments, two of which should be subordinate to the third. Furthermore, it was not the original purpose of the people of Massachusetts to create a court which could contravene the decisions of the other departments. I say the "other departments," because we forget when we talk about the present authority of the courts over legislative acts that they have and exercise an equal authority in many cases over executive acts, sometimes in decisions on formal suits, although commonly through the formal writs which have reference to the executive powers.

Permit me to say, as a life-long student of constitutional history, that when the present Constitution of Massachusetts was framed it was not in the mind of any member of the original Convention that the courts of Massachusetts were to have the power to set aside acts of the General Court on the ground of unconstitutionality. And what is the proof? In the first place, that it never had been done under the old provincial government. It is true that a considerable number of statutes of the Province of Massachusetts was set aside in England; but I challenge any member of this Convention to find a single case in

[1] Herbert Pope, in an article on The Fundamental Law and the Power of the Courts, Harvard Law Review, Vol. 27, page 45.

which a statute was set aside upon the ground that it was inconsistent with the charter of the Commonwealth. Further, up to 1780, not one of the States of the Union, in their existence of four years, had taken action in this direction. Between 1780 and 1787 six or seven legal cases arose in which the courts of some other States did set aside statutes. I have examined them carefully, and every single one of those cases arose out of the abnormal conditions of the Revolution. They were mostly statutes directed against loyalists, disallowed as contrary to general principles of law. One was the Rhode Island statute for compelling people to accept paper money. All of them were statutes of a transitional, a passing period. It is true that Thomas Jefferson gave currency to the statement that the Supreme Judicial Court of Massachusetts previous to 1787 had set aside a statute. Some years ago I instituted a search in the manuscript records and can say positively that there never was any such decision. No State in the Union in 1787 had arrived definitely at the system of judicial disallowance of laws, although there had been some advances toward it.

Then what brought that system into this country? Not a demand in the States, but the creation of a powerful Federal government, with a Federal court and with Federal legislation. Here was presented a new situation: A Congress of two bodies with very extensive powers which operated throughout the Union, the superior to Legislatures and the courts of all the separate States. If you will follow the debates in the Federal Constitutional Convention of 1787 you will discover that it was the purpose of the Convention in creating that Constitution to give the Supreme Court of the United States the power to set aside State statutes because they were not in accordance with the supreme law.

It was not distinctly settled that Federal statutes should be set aside by Federal courts; in fact, it was no less than 69 years after the Constitutional Convention before a general statute of the United States not relating to the judiciary was set aside by the Supreme Court. That was the Dred Scott decision. Five years later Congress passed a series of statutes in absolute derogation and defiance and contempt of that decision, and those statutes stood. After the civil war, the court took up again the practice of reviewing the statutes, and that has ever since continued.

That experience does not carry us far, because since 1789 the system of judicial review has grown up in all the States of the Union. We have it in Massachusetts. The real question is not so much what was intended a century ago, but what do the people of Massachusetts desire now, and what are they receiving?

The historical question in itself is not of great importance, unless some member of this Convention is convinced that we must now have and must continue to have this special judicial power because we have "always had it." We have not always had it. It came slowly, indirectly, imperceptibly into the courts of the United States and into the courts of Massachusetts after 1789. In this Commonwealth we have a special system of government of which, curiously enough, the people hardly seem aware. As I am a newcomer in the State, having lived only 40 years in Cambridge, these things strike me with more force than they do you who are to the manor born. In all the other States

of the Union the constitutions contain a large number of specific powers assigned to the Legislature, exactly as to the executive and the judiciary, and also many limitations upon the powers of the Legislature. The Massachusetts Constitution is singularly modest in such provisions. You have the general limitations of the Bill of Rights, and a few other specific limitations on the Legislature. There are only half a dozen places in the text of the Constitution, which I have examined within a few minutes, in which the Legislature is specifically given authority to do anything. Why? Because it was then, and is now, the theory that to the Legislature fell all the powers which can be exercised by a government in this Commonwealth, which are not prohibited by the Federal Constitution or elsewhere in the Constitution of Massachusetts with its amendments.

What is the effect of this lack of precise definition upon the courts? Why, simply this: In other States which are provided with a large body of constitutional precepts the courts can force legislation to accord with specific clauses of the Constitution. In this State to a far greater degree the courts are applying to legislation unwritten principles which are nowhere stated in the Constitution. That is, you have upon the one side the Legislature, acting in a large way under its general power; upon the other side you have the courts discovering and applying unwritten conditions and statements as to the powers of government which are made limitations by the Legislature. We have nothing like the elaborate, fixed, adjustable and ascertainable system which prevails in some other States.

Now, the truth is that the system in Massachusetts has worked well. Every resident of this State feels that the judiciary is one of the soundest parts of its governmental organization. The Supreme Judicial Court has taken an unfair advantage of this Convention by sending as a representative here from Fall River (Mr. Morton), sitting among us, a jurist whose honor is unassailable and whose abilities and whose impartiality are absolutely beyond dispute. We fairly judge the courts by those members of them with whom we are acquainted; and we may well rate the Supreme Judicial Court and most of the other courts of Massachusetts high. Nevertheless, there is no use in trying to go through our work under the superstition that the judges of the Supreme Judicial Court are a different kind of being from other citizens of Massachusetts. We look to them to suggest, improve and reform. I felt pained and disappointed to be assured so eloquently by a member of the Judiciary Committee, as I understood it, that that committee, including a former member of the Supreme Judicial Court, did not see anything that could be improved in our present judicial system.

That leads to another point, which ought to animate our minds throughout this Convention upon every subject that we discuss, namely, who are the "we" in this Commonwealth? Who are the people of Massachusetts? How far are they satisfied with the government which was made, in many cases, before they came into this country? Are we to accept the principle that the immigrant from another State or from another country arriving in Massachusetts is thereafter precluded from making any suggestion for the betterment of the government under which he finds himself? It is a fact which we must take to heart that a very considerable number of the inhab-

itants of this State, including large numbers organized in powerful ways, headed by very astute and able leaders, a considerable number of whom are in this Convention, are not satisfied with the present condition. Very likely when you come down to it some of them could not more articulately explain their difficulty than the labor leader in England who was asked: "What do you fellows want?" "Well, we doant want what we've got." Now, there are hundreds and thousands of people in Massachusetts who, whether right or wrong, do not want what they have got, and it behooves us to examine as carefully as we can the ground of these protests so as to see what can be conceded that will satisfy some of the dissatisfied.

The discussion at the present moment is relieved of some of its purpose by the fact that it seems evident from the temper of the Convention that no serious changes are likely to be made in the judiciary, — not even that set forth in the educative proposition of the gentleman from Brookline (Mr. Anderson). The Convention is startled to hear a lawyer who is not satisfied with the state of the law and the courts in Massachusetts! You would think that he had had no experience of courts and justice did you not know the contrary.

What is to be the relief? The committee on the Judiciary tell us that there is none to come from them because none is needed, because everything is for the best in "the best possible of Massachusetts." Some people think that there must be a way out of the present dissatisfaction. In the first place, they believe that the courts have no more fundamental constitutional right to declare upon statutes than has the Governor or the Legislature; that the right of review is an acquired right, a derived right, a definite right. If it works well, so far so good; if it does not work well it is for us to suggest a remedy, and we are not shut in from putting limitations on the method of review.

Mr. Sanford Bates of Boston: I should like the opportunity of asking the gentleman three categorical questions, and I should like, if possible, a categorical reply. The first question is this: Does he believe in a written Constitution and frame of government as a guide to governmental policy?

Mr. Hart: The gentleman's questions are evidently such as will require a careful and positive answer. I will therefore yield at this point and will resume to-morrow, and will ask the gentleman to give me his questions in person.

Mr. George W. Anderson of Brookline moved that resolution No. 47 be amended by substituting the following new draft.

No law duly enacted by the General Court shall be nullified as unconstitutional except by the Supreme Judicial Court with the concurrence of not less than two-thirds of all the Justices thereof.

Discussion of the measure was resumed the following day.

Mr. Hart of Cambridge: I shall occupy the attention of this committee only a very few minutes in concluding the remarks on which I was engaged at four o'clock yesterday afternoon. There is but one thing which I wish if possible to bring to your attention, and I shall put it as briefly as possible. That point is simply that our system of declaring legislative acts void by the judicial courts is not a system founded in natural rights or in the nature of American government, and that therefore the present system in Massachusetts cannot claim

that it must be sustained precisely as it stands lest otherwise we should lose our Commonwealth government.

Yesterday I tried to make clear that the system was not to be found in the text of the Massachusetts Constitution of 1780. Since that time I have noticed in one of the morning papers a letter written to the Advertiser July 31, in which the effort is made to show that this power is embedded in the Constitution of 1780 because it declares that all the laws of the Province, Colony or State previous to 1780 should be in force until altered or repealed by the Legislature, — "such parts only excepted as are repugnant to the rights and liberties contained in this Constitution." And he deduces from that language that the courts were expected to maintain that clause of the Constitution by annulling legislation. The complete answer to that statement and all similar statements is that the Constitution was adopted in 1780 and there is not a single case previous to the Federal Constitution, which went into effect in 1789, in which the Massachusetts courts declared void or set aside an act of the General Court. It began to do so after 1789, and it began to do so because of the example of the Federal courts, which in the period from 1789 to 1807 were reaching out to annul State statutes, a process necessary under our principles of Federal government, but not equally necessary within this Commonwealth.

Another reason for supposing that this system is not a vested right, an irrepealable principle of government, is that it does not prevail in some other Commonwealths which are essentially republican. For instance, in Great Britain it has been for ages the principle that the last act of Parliament was the prevailing act of Parliament, that it repealed all previous acts and that the courts were bound to take jurisdiction and to respect those acts accordingly. It is true, as Mr. Bryce has said, that should Great Britain be organized as a great imperial federation, which seems not unlikely, it then would be necessary to create a Supreme Federal Court, in order to maintain the Federal Constitution as against the Constitutions of the States; and there is great reason for thinking that might be done because the Canadian federation, the Australian federation and the South African federation, particularly the Australian, have a system very closely akin to ours, by which the Federal courts can set aside the acts of the States of those federations.

The main point, then, is that the present system may be altered without stumbling against any vested interest or rightful principle. No part of the Massachusetts government has a vested right. The only things resembling vested rights are the rights of the people as embodied in the Bill of Rights, and there are other rights not so embodied which are commonly respected. The General Court, the executive, the courts themselves, are the creatures of the people of Massachusetts acting through their constitutional authority. It is competent, therefore, for this Constitutional Convention to propose to the people such measures with reference to the courts as may seem wise to this body.

That leads me to the final point, which is, that other methods are possible which may limit to some degree the authority of the courts to pronounce upon statutes, — such a proposition, for instance, as was made yesterday, and, I suppose, in the course of this morning will

come before you directly for your consideration; a proposition by which a two-thirds vote of the courts should be necessary. There is one obvious remedy, — and I tell you again, gentlemen, as I said yesterday, that there is something to remedy, — that however we may feel within this body of 320 highly respectable men, there is a large part of the population of Massachusetts which does not understand and is not satisfied with the present powers of the courts. It is one of our great misfortunes that in a State which has such an admirable judiciary, such an unquestioned judiciary, there should be nevertheless a wide-spread distrust of the judicial system.

A gentleman yesterday asked me to yield because he said he had some queries to put to me. Those queries have not reached me in the interim, but I shall be very glad to answer them offhand.

Mr. SANFORD BATES of Boston: I cannot resist the invitation of the gentleman to put these questions to him again. I looked for him after the session last night, but I did not find him.

These are categorical questions, Mr. Chairman, and I do not care to enter into any discussion on them, and I should like if possible to have a short reply.

My first question is: Does the gentleman believe in a Constitution as a frame of government as a guide to governmental policy and as a short statement of the principles which are essential to a democratic government? Does he believe in such a Constitution, — a written Constitution?

Mr. HART: Certainly, I believe in it, — a written Constitution for the United States of America and for every Commonwealth. Is the gentleman answered?

Mr. BATES: My second question to the gentleman is, assuming that he believes in such a Constitution, does he believe that the legislative department and the executive department of the government, in common with all other people, ought to live up to and obey that Constitution?

Mr. HART: Most certainly.

Mr. BATES: Assuming, Mr. Chairman, that he believes in a Constitution which all the people should obey and be governed by, does he believe that there ought to be some impartial and expert tribunal to decide whether or not the people have obeyed it, or not?

Mr. HART: I believe that it is entirely possible to create democratic communities in which the courts have not the power to set aside the action of the legislative or executive departments. On the other hand, I believe that in Massachusetts we are accustomed to that method of government; that on the whole it works well, — works so well that according to the statement made upon the floor here yesterday, if there had been a two-thirds rule, by far the greater part of the setting aside of statutes would have been accomplished nevertheless; so that a proposal to limit the number of judges would not much interfere with the actual operation of the courts upon statutes. Are there any further questions?

Mr. BATES: My attention may have been distracted, but I have not heard the answer to my third question yet. My question is, assuming that the legislative department of government oversteps or disobeys the mandates of the Constitution, would the gentleman let the Legislature be the judge of its own acts? Would he let the executive de-

partment be the judge of its own acts or would he require some impartial tribunal interpreting and expounding that Constitution to be the judge of the acts of these other two departments of government?

Mr. HART: I believe in Massachusetts it is better to have such a tribunal as it now possesses, such as is suggested by the gentleman, to place the legislative under proper restrictions by the judiciary.

One of my friends entering the hall remarked to me that apparently I expected to break every rule of this Convention, and I corrected him by saying that I expected to learn every rule before I got through. I thank all those who have assisted me in the teaching.

Mr. WASHBURN of Middleborough: During the first day's discussion on this resolution an allusion was made to the English constitutional system, which has been renewed this morning by my friend from Cambridge (Mr. Hart). On Friday last, if I understood him correctly, the gentleman from Haverhill (Mr. Morrill) referred to it in support of his contention that our theory of judicial control is extra-constitutional. There is, of course, an elemental and a fundamental difference between the English and the American systems. That difference is obvious, and perhaps it already has been referred to in this debate. As we all know, the Constitution of Great Britain is unwritten; it is based on precedent. There the law of the land is precisely what the English Parliament, which is well-nigh supreme, chooses in the light of precedent to make it. Here we have proceeded upon quite another theory. Here the measure of our liberties is sought, at least, to be exactly expressed in a written instrument, with its checks and its balances, and all that that implies.

Mr. Chairman, most bodies of men if uncurbed are prone to usurp power. This, I take it, is a very human weakness. In Massachusetts it has been our boast, and we have made good the boast, that every citizen, the most humble as well as the most powerful, finds his security in our laws. Suppose, now, that upon one plea or another the legislative branch of the government should transcend the bounds of its authority — suppose that it should encroach upon the rights of the citizen, whether weak or strong I care not, what is to be his remedy, or is he to have no remedy save that which appeals to the whim of a transient majority? I have heard as yet so far in this discussion no answer to this query, save that suggested in the resolution, which seems to me unwise, of the gentleman from Brookline (Mr. Anderson).

I have listened with a great deal of interest to the able speech of the gentleman from Cambridge (Mr. Hart). His thesis, if I understand him, is that the theory of judicial control is a modern, not to say a dangerous, innovation. Now, it may well be that the Dred Scott decision was the first conspicuous example of the exercise of this power. I do not question his statement on that score. But he goes farther and says that the theory was unknown in the Constitutional Convention of 1780. Mr. Chairman, I do not believe that any man now living can say with precision just what was or was not considered and debated in that Convention. The records are much too meager. But, sir, there were men sitting in the Constitutional Convention of 1820 who lived so close to the Revolutionary era as to make their testimony of the utmost value. Daniel Webster made a speech in that Convention upon the proposal that the judges should be removed only upon the address of two-thirds of each branch of the Legislature. There are

some things which he said in that speech which are very pertinent to this discussion, and this seems to me an appropriate time to read them into the record for the benefit of this Convention. I quote from Mr. Webster's speech:

> The Constitution being the supreme law, it follows, of course, that every act of the Legislature contrary to that law must be void. But who shall decide this question? Shall the Legislature itself decide it? If so, then the Constitution ceases to be a *legal* and becomes only a *moral* restraint on the Legislature. If they, and they only, are to judge whether their acts be conformable to the Constitution, then the Constitution is *admonitory* or *advisory* only; not legally binding; because if the *construction* of it rest wholly with them, their *discretion*, in particular cases, may be in favor of very erroneous and dangerous constructions. Hence the courts of law necessarily, when a case arises, must decide upon the validity of particular acts. These cases are rare, at least in this Commonwealth; but they would probably be less so, if the power of the judiciary in this respect were less respectable than it is.

I call particular attention to this language:

> It is the theory and plan of the Constitution to restrain the Legislature, as well as other departments, and to subject their acts to judicial decision, whenever it appears that such acts infringe constitutional limits, — and without this check, no certain limitation could exist on the exercise of legislative power. The Constitution, for example, declares that the Legislature shall not suspend the benefit of the writ of *Habeas Corpus*, except under certain limitations. If a law should happen to be passed, restraining personal liberty, and an individual, feeling oppressed by it, should apply for his *Habeas Corpus*, must not the judges decide what *is* the benefit of *Habeas Corpus*, intended by the Constitution; what it is to *suspend it*, and whether the act of the Legislature does, in the given case, conform to the Constitution? All these questions would of course arise. The judge is bound by his oath to decide according to law. The Constitution is the supreme law. Any act of the Legislature, therefore, inconsistent with that supreme law, must yield to it; and any judge, seeing this inconsistency, and yet giving effect to the law, would violate both his duty and his oath. But it is evident that this power, to be useful, must be lodged in independent hands.

And, again, — this citation is not very long:

> There is nothing after all so important to individuals as the upright administration of justice. This comes home to every man; life, liberty, reputation, property, all depend on this. No government does its duty to the people, which does not make ample and stable provision for the exercise of this part of its powers. Nor is it enough, that there are courts which will deal justly with mere private questions. We look to the judicial tribunal for protection against illegal or unconstitutional acts, from whatever quarter they may proceed. The courts of law, independent judges, and enlightened juries, are citadels of popular liberty, as well as temples of private justice. The most essential rights connected with political liberty are there canvassed, discussed and maintained; and if it should, at any time, so happen, that these rights should be invaded, there is no remedy, but a reliance on the courts to protect and vindicate them. There is danger also, that legislative bodies will sometimes pass laws interfering with other private rights, besides those connected with political liberty. Individuals are too apt to apply to the legislative power to interfere with private cases, or private property; and such applications sometimes meet with favor and support. There would be no security, if these interferences were not subject to some subsequent constitutional revision, where all parties could be heard, and justice administered according to standing laws. These considerations are among those which, in my opinion, render an independent judiciary equally essential to the preservation of private rights and public liberty.

Those words are as true to-day as they were the day they were uttered. In the Federal field this doctrine was early recognized. The truth is, of course, that it was accepted by the Federalists and not accepted by the Non-Federalists. I think the use of the word "oppose" would convey a wrong meaning there. There was very little discussion on this matter during the period preceding the adoption of the Federal

Constitution. It was swamped in the then greater question of State sovereignty.

Judges possess, and no doubt at times display, human frailties, but what tribunal created by man is as likely to be as impartial, as unprejudiced and as fearless, as an independent judiciary? The doctrine of judicial control naturally and logically results from a system of government which rests on a written Constitution. It would be unfortunate of course if the public or private rights of the citizen were to be vindicated by a close decision, say a four to three decision; but it would be still more deplorable if those same rights, while being upheld by a majority opinion, were nevertheless denied the citizen because one less than the two-thirds called for by the resolution of the gentleman from Brookline should fail to agree with the majority of the court. I trust, Mr. Chairman, that this and kindred resolutions, and the amendments thereto, will not prevail.

Mr. McANARNEY of Quincy: I cannot help feeling that some of the speakers on the matter now before the Convention have lost the proper viewpoint of the question. Let me illustrate what I mean by giving you an example.

We will assume that the Legislature of 1917 passed a law providing that no man shall teach in any of our higher institutions of learning unless he has first obtained a license from the Board of Education, and further providing that whoever did so teach without such a license would be subject to two months' imprisonment for each year he had so taught, and that the law should take effect as of and from the first day of January, 1912. Now we will assume that the district attorney of Middlesex County, feeling the act of the Legislature should be obeyed, procured an indictment from the Middlesex grand jury against one of the learned professors of Harvard College, alleging a violation of the act since 1912, and an officer of the law takes the professor into custody and to the Cambridge jail. He procures bail; and being a wise professor he consults a lawyer. The lawyer tells him: "Why, you needn't worry. That act cannot be enforced. It is what we lawyers call an *ex post facto* law. It undertakes to make that an offence which happened before the act was passed. Impossible; that cannot lawfully be done." The professor, happy in the advice he gets, on the day assigned for the trial of his case in the Superior Court, takes his stand before the bar of justice where he is arraigned for trial. His counsel, having filed a proper motion, asks the court to dispose of the proceedings accordingly. Now what would the professor say if the judge of the court were to say: "The act of the Legislature should not be enforced. The Legislature has no power nor authority to pass an *ex post facto* law. It violates the Constitution of Massachusetts, Article XXIV of the Bill of Rights prohibiting the doing of any such thing. Your client should not have been placed at the bar of this court. But I turn to the records of the Constitutional Convention of 1917 and I find in the debate learned gentlemen saying that this court, being a court of inferior jurisdiction, not being the court of last resort, ought not to declare an act of the Legislature unconstitutional. As I do not wish this court to do what it ought not to do, there is nothing for me to do if I follow the view of those gentlemen but to impose the penalty provided by the statute. I therefore sentence your client to ten months in the house of correction, two months for each of the past

five years that he had had no license to teach from the Board of Education." How would the professor feel then?

If the professor were a rich man as well as a wise one he would give the lawyer some hundreds of dollars to take his case to the Supreme Judicial Court; but if he were a poor man and found himself up against a law of that kind, and placed on trial before a judge adopting the views of those gentlemen, he would be compelled to submit to imprisonment. Would it be right? Would it spell true to your sense of justice and square dealing, to have such a result occur? To tie the hands of the lower court so that it cannot declare an act so oppressive and illegal as that act unconstitutional and give to a subject of this Commonwealth the right which is guaranteed to him by the Constitution? Will men rise in this chamber and say that a judge would be true to his oath of office if he denies to a defendant before him that freedom which the law of the land said should be his? And yet is not that what these gentlemen say when they urge that a judge of the lower court should not have the power to hold an act unconstitutional which is so obviously so?

Now our friend the professor carries his case to the Supreme Judicial Court, and there again the arguments in favor of the defendant are urged upon the full bench. And we will assume that after argument the Chief Justice of the Court says to the professor's counsel: "All that you say is true; the act is directly in contradiction to the provisions of the State Constitution. But we read in the debates of the Constitutional Convention of 1917 that learned gentlemen there said that this court, the Supreme Judicial Court of Massachusetts, has no right to declare an act unconstitutional; not wishing to usurp a power not constitutionally vesting in us, we must refrain from declaring it unconstitutional, and therefore your client must serve ten months in jail." To what a result would the reasoning adopted by these gentlemen lead us if we were to say that the Supreme Judicial Court of this Commonwealth shall not declare an act of the Legislature unconstitutional? Now either the court has the power to declare legislative acts illegal or it has not that power. If it has the power from whence does it derive it? From the written law of the land and from its inherent power.

It is written in the Constitution of Massachusetts as clearly as words can make it that courts have that power and authority.

It has been said here by a learned gentleman that prior to the adoption of the Constitution of Massachusetts this power never was exercised by our courts. And yet go into the hall of this State House, stand before that picture of James Otis, the great patriot of revolutionary days, and call to mind the words that fell from his lips in 1761, nineteen years before this Constitution was adopted, and hear him declaring the power to rest in the courts of Massachusetts to declare an act unconstitutional when it was clearly so.

Mr. HART: May I ask the gentleman if he knows what was the decision of the court in the case which he has mentioned.

Mr. MCANARNEY: I am referring to the speech of the patriot James Otis in which he said, speaking of the writs of assistance which were applied for: "Reason and the Constitution are both against this writ. An act against the Constitution is void." And in 1784 he published his pamphlet on the right of the British colonies in that respect.

James Otis in his speech made this significant argument:

> Men cannot live apart and independent of each other; yet they cannot live together without contests. These contests require some arbitrator to determine them. The necessity of a common, indifferent and impartial judge makes all men seek one.

Here we have the authority of that learned patriot and one of the fathers of this Commonwealth. But we go back of him. We go back over a hundred years earlier and find in the records of the courts of this Commonwealth a decision bearing upon that very subject. In 1657 in Massachusetts the magistrates held void the vote of a town-meeting giving a minister a house as being against the fundamental law of Massachusetts, and declared that vote unconstitutional as being against the fundamental law of the Colony.

And do we have to go back to ancient times? Need we look outside the walls of the document that we are now considering? Let us see. Did the fathers think that there was no occasion for such a tribunal? Let us look at the Constitution, Chapter 6, Article VI:

> All the laws which have heretofore been adopted, used and approved in the Province, Colony or State of Massachusetts Bay, and usually practiced on in the courts of law, shall still remain and be in full force, until altered or repealed by the Legislature; —

Now note these words, because they state the whole case:

> such parts only excepted as are repugnant to the rights and liberties contained in this Constitution.

So much of those laws as were not repugnant to the Constitution were to be retained. Who was going to decide what portions of those laws were repugnant to the Constitution? Were the two parties whose interests came in conflict left to decide it? Do you think the fathers did their work in such an incomplete manner? The Constitution declares who shall decide it. We turn to page 15 of the little booklet that we have here (State Constitution) Article XXIX of the Bill of Rights:

> It is essential to the preservation of the rights of every individual, his life, liberty, property and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit.

If, therefore, a man were now to be brought up against a provision of our Colonial laws in conflict with the Constitution, he has a right to invoke the decision of the judges in the express language contained in the Constitution. You have in the Constitution itself an express declaration that the rights of citizens were to be determined by a free and impartial tribunal, to wit: The courts of this Commonwealth. In my argument I take it for granted that there is no occasion for my addressing the lawyers of the Convention on this subject, because they know that in the Constitution that right is clearly given to the courts.

Passing to another branch of this question: If our courts have that power and right, shall it be preserved to them? I want to speak for those who are not here to speak for themselves. I want to speak for the citizens of this Commonwealth who cannot afford to engage in lawsuits and litigation. I want to have it written into the records of these debates that here and now, — at least at this time, — a voice was raised in their behalf. Are we going to say to the citizens of this Commonwealth: "Here is your Constitution, your fundamental bind-

ing law. Within the rights which are granted to you therein you must live and within the limitations there expressed and implied the courts of the Commonwealth must protect those rights;" and in the same breath to say to them: "The rights guaranteed to you there we cannot say will at all times be preserved to you. The Legislature may at any time take them away." Who rules in this Commonwealth of Massachusetts to-day, the people or the Legislature? The people rule. The people have made this Constitution; they have declared it; they have declared that the laws contained in it shall be the standing, governing law of the Commonwealth of Massachusetts until they, the people, change it. And yet if you were to follow the arguments of the gentlemen who have spoken against the report of the committee you will say that this Convention should take away that power from the people and give it to the Legislature, that in any one year the Legislature of Massachusetts should have the power to suspend or wipe out in whole or in part the Constitution of the State. Such an argument is an alarming argument to make in a tribunal of this kind and it ought not to receive weight or consideration. Is not that the logical conclusion a man must come to who follows the argument of those opposed to the report of the Judiciary Committee? If the Legislature has power to pass a single law which goes contrary to the Constitution and the courts have not the power to declare it unconstitutional, then the Legislature has the power to declare the whole Constitution void and there can be no tribunal in this State which shall say Nay to their will.

Mr. Chairman, it is suggested here as a remedy that we restrain the courts from declaring an act unconstitutional unless more than a majority shall approve of such conduct. The other day I was amused as well as interested in an appeal which was made by the venerable delegate from Brockton (Mr. Brown) when he stood in the front of this division and raised his voice and cried out to the "initiative and referendum" men of this Convention: "Where are you, initiative and referendum men? This is an initiative and referendum matter." Well, if ever any matter that has been before this Convention was an initiative and referendum matter, the proposition that is now before the Convention is an initiative and referendum matter, because you are asked to say that the decision of the Supreme Judicial Court by a majority of one, or four against three, shall not be accepted as binding upon the people of this Commonwealth. Do you know where that will lead you? Adopt the report of the committee on the Initiative and Referendum. Put into it that principle. You will read in the report of that committee that, having complied with certain preliminaries, the signers of the petition may cause to be submitted to the people a proposition to amend the Constitution, and if that amendment of the Constitution be adopted by a majority of one the Constitution shall be considered as so amended.

Now if it is right to have written into the initiative and referendum law a provision that one vote in this Commonwealth, — a majority of one vote, — may amend the great fundamental law of the Commonwealth, if that is sound from that standpoint is it not equally sound to say that the vote of a majority of the members of the Supreme Judicial Court is sufficient to declare an act unconstitutional? The opponents of the initiative and referendum urge that in such a case the

new amendment would be adopted by one vote, — as these other gentlemen charge that an act declared unconstitutional by a majority of one, would be so declared by one judge. But you and I know, sir, that the reasoning is not true which says that when there is a mere majority, a majority of one, that one man's vote is the vote that declares the act accepted or the amendment adopted to our Constitution. It is not stating the case fairly to so state. If we have 500,000 votes cast in an election and 250,001 votes are for the amendment, it is not right, it is not stating the case accurately to say that that one vote is what adopts the amendment. It is that one vote and the other 250,000; it is the 250,001 votes that adopt the amendment and not the one vote. So when we are discussing a majority decision of the Supreme Judicial Court it is not stating it accurately, it is not stating it correctly, to say that it is a decision of one man that declares an act unconstitutional. It is not the decision of one man; it is the decision of one judge and three other judges. It is the decision of four men that declares the act unconstitutional. And it is that reasoning, I apprehend, which will lead many men to vote for, if they do vote for, that provision of the committee's report on the initiative and referendum.

I say, Mr. Chairman, that we are not approaching this matter from the proper angle when we argue that a decision of four members of our Supreme Judicial Court is the decision of the fourth man, the deciding judge, in favor of declaring an act unconstitutional.

But there is more than that. If I have not referred to it already I wish to refer to it now. The Constitution provides how it shall be amended. Are we satisfied with the method provided in the Constitution to amend it? Some members of this Convention are, others are not. They want the additional relief which may be afforded by the proposed initiative and referendum law. If an initiative and referendum law should be adopted, then we shall have two methods of amending our Constitution and will not that be enough? Will you not be satisfied with that? Will you want a third method of amending the Constitution? By a mere legislative act? Why, what was the basis of this argument which has been advanced —

Mr. Herbert A. Kenny of Boston: If the Legislature of Massachusetts passes a Workmen's Compensation Act and the Chief Justice of the Supreme Judicial Court nullifies or varies an essential part of the Workmen's Compensation Act, what remedy have the people to restrain the Justices in such a case?

Mr. McAnarney: May I inquire of the learned gentleman, did the Chief Justice of our Supreme Judicial Court make a ruling declaring the Workmen's Compensation Act to be unconstitutional, or did he merely send down a decision as to the application of a certain provision of that law?

Mr. Kenny: In order to answer that I may say that the Legislature passed the Workmen's Compensation Act and said that a man injured in the course of his employment was entitled to compensation. Mr. Patrick Donahue, a travelling salesman, was injured as a travelling salesman on the streets of Lowell in the course of his employment, and Chief Justice Rugg said that he was not entitled to compensation.

Mr. McAnarney: I have here that decision, because my friend referred to it yesterday, the case of Donahue. The opinion was rendered

by Mr. Justice Crosby and not by Chief Justice Rugg, and in that opinion the court does not declare the act unconstitutional. The court makes no criticism or question as to that act. It indirectly acknowledges it and approves it and merely declares that the man when he met with his injury was not engaged within the scope of his employment, a question that has nothing to do with the subject-matter before this Convention. And if the gentleman doubts my interpretation of that law let him read to you the decision in the Donahue case. I had assumed that all lawyers were familiar with that decision. Mr. Chairman, the great big question back of this whole proposition is this: Shall we give to the Legislature the power of amending the Constitution of Massachusetts?

Mr. KENNY: Will the gentleman kindly answer my question? I do not think he has answered my question.

Mr. MCANARNEY: Yes, Mr. Chairman, if I have not answered I will answer it very readily. If the court's decision, which had nothing to do with the constitutionality of that act, is unsatisfactory, all that those who find fault with that act or decision have to do, — and it is the true remedy in cases of that kind, — is to go to the Legislature and have an act passed which shall extend the scope of the law they complain of and make it applicable to the condition of facts they are concerned with. [Applause.]

Now, Mr. Chairman, I come back to where I was at the time of my last interruption. Are we going to say to the Legislature of Massachusetts: "We give to you a third method of amending our Constitution"? Have we not heard during the past few years, scattered broadcast throughout the Commonwealth, a charge, — was it not put into the annual message of one of the Governors of this Commonwealth, — that there is a form of government known as "invisible government," which sometimes controls administrations and directs legislation in Massachusetts? And are we prepared to place the Constitution of Massachusetts and the amendments to that Constitution in the hands of a Legislature that may be under the control, influence and domination of this invisible form of government? Why, Mr. Chairman, it seems to me that the men who stand here speaking for the laboring classes, for laboring men, instead of being arrayed against the Judiciary Committee should be fighting shoulder to shoulder with the Judiciary Committee, because we want to stop any corruption on the part of the Legislature, to prevent any giving up by the Legislature to the hypnotic power or eloquence of any great leader or commanding influence that may dominate or secure the passage of special legislation at any particular time, contrary to the principles of the Constitution.

I trust, Mr. Chairman, that the time never will come in Massachusetts when that great fundamental law which defines our liberties and under whose protection we exercise all our rights shall be declared, by such a mere passing creature of the hour as the Legislature of any one year, a mere "scrap of paper." [Prolonged applause.]

Mr. DONOVAN of Springfield: I have noticed that there are fifteen resolutions bearing upon some phase of judicial reform that have been considered by the committee on the Judiciary. Each and every one of those resolutions is reported "Ought not to pass." I contend, Mr. Chairman and gentlemen of the Convention, that this number of resolutions, each striving in some one way to limit the excessive, or what

seems to the proponents of those resolutions the excessive, power of the judiciary, represents a large force in public opinion in this Commonwealth. I believe that that force cannot be ignored. Some who have spoken here, more or less dimly recognized that there are social forces at work. I remember that the gentleman from Cambridge (Mr. Hart) has referred somewhat or in part to those social forces. I know that my venerable friend from Brockton (Mr. Brown) more than any one else probably has sensed the social forces that are at work not only in the Nation but in the Commonwealth of Massachusetts, and those social forces reflect themselves in a desire for a reform in the judiciary.

Although we are considering at this time resolution No. 47, I believe other resolutions that follow are very closely related to that resolution. And when we dispose of that, if we dispose of it intelligently and in a manner that shall be at least partially satisfactory, there is a possibility that the other resolutions bearing upon the same matter will not be urged with such excessive zeal as they will otherwise.

I should like to call to your attention, — some of you possibly have read this item that appeared in some of the Boston papers, — an article by Roger W. Babson, in which he refers to certain tendencies that are present throughout the world. I have heard muttered imprecations against honest lawyers who have attempted to get up here and who have assumed to have an opinion upon the judiciary. It has been felt, no doubt, that they have been encroaching upon a sacred jurisdiction. Nevertheless, they are the spokesmen and have the clearest understanding of those social tendencies that are at work, and I think it might be well for the delegates to give some consideration to this wide-spread demand.

It may seem to some of the very dignified looking gentlemen here, who have expressed some contempt for the voice of labor that has been heard persistently in this Convention through the gentleman from Brockton, that they can depend upon the "iron heel" to crush any manifestations of industrial or social unrest. But I really believe, gentlemen, speaking as one who wishes to see stability in government, one who wishes to see these great social problems intelligently met and solved, — I say that those men are not giving due consideration to the real facts of our day. The gentleman from Lynn in the center of the division (Mr. Bauer) referred to something that I believe, — at least that I am in full accord with, — and that was that "from his observation, a long observation of the acts of the judiciary," he was convinced that the social and economic environment of the several members of the judiciary to a large extent moulded their decisions upon any fundamental matter. In other words, they reflected the policy that they themselves approved, and they disapproved any policy that they themselves opposed. Their own environment had tended to determine their opinion. I believe that that cannot be gainsaid. I believe it is shown by the differences of opinion that have existed when certain decisions have been made. I refer particularly to the case referred to by the gentleman from Brookline (Mr. Anderson) which was known as the Income Tax Case. This was referred to yesterday as a "judicial scandal," and as evidence that it was such and held to be such by certain members of the Supreme Court, I will read what the gentleman who wrote the opinion held. I believe it bears out fully what the gentleman from Brookline stated —

Mr. MONTAGUE of Boston: I desire to ask whether the gentleman is referring to the Supreme Judicial Court of Massachusetts or to the Supreme Court of the United States?

Mr. DONOVAN: I will answer that in this case I am referring to a decision of the Supreme Court of the United States. I believe that the principle involved in our State is the same principle involved in the criticism made against the Federal judiciary. It might be somewhat enlightening to hear the opinion as expressed by Mr. Justice Field, who wrote the decision in the matter in question, the Income Tax Law. I believe that this opinion is very pertinent to the present situation and is no doubt about the same line of argument that will be used by those who oppose any change in the Massachusetts judiciary. Mr. Justice Field writes as follows:

> The present assault upon capital is but the beginning. It will be but the stepping-stone to others, larger and more sweeping, till our political contests will become a war of the poor against the rich; a war constantly growing in intensity and bitterness. If the purely arbitrary limitation of $4,000 in the present law be sustained, none having less than that amount of income being assessed or taxed for the support of the government, the limitation of future Congresses may be fixed at a much larger sum, at $5,000, $10,000, or $20,000, parties possessing an income of that amount alone being bound to bear the burdens of government; or the limitation may be designated at such an amount as a board of "walking delegates" may deem necessary.

Now it does not require a lawyer to perceive that the Income Tax Law was declared unconstitutional because the court did not approve of the policy of taxing incomes.

I have heard many learned gentlemen in this body uphold the integrity, the honesty and the goodness of the Massachusetts judiciary. I do not combat that argument in any way; I make no such attempt. It is not the contention that they are bad men; but bad interpretations of law have been made by good men, at times, and it is merely the power that has been delegated, — or not delegated, but usurped rather, — by the judiciary that we as representatives of a certain part of the people are opposed to.

After the Income Tax decision another decision a short time later that caused considerable criticism was that under the Sherman Anti-Trust Law relating to the Standard Oil and Tobacco Trust cases. There was considerable criticism of that decision. That perhaps was not such a scandal as the other, but at least it called forth considerable wide-spread criticism. The part that I am particularly interested in, however, was the interpretation of that law, the same Sherman Anti-Trust Law, which referred to the Danbury Hatters' Case. That is peculiarly pertinent at this time, because we in this Convention must consider matters later on that are very closely related to that decision —

Mr. MONTAGUE: I should like to ask if the Danbury Hatters' Case, so called, was decided in any one of its phases by any court of the Commonwealth of Massachusetts?

Mr. DONOVAN: No. I believe, gentlemen, that the principle involved here is the principle —

Mr. BROWN: I would ask whether the courts of Massachusetts are not bound to take cognizance of the decisions of the Danbury case in the United States courts if they decide any case here?

Mr. DONOVAN: I would answer, they have, by all means, in my estimation. The decision in the Danbury Hatters' Case, I believe, is

very pertinent to the deliberations of this body, because I understand that later on there are some questions to come before the Committee of the Whole and before this Convention which are a result of that decision. I am going to quote from the dissenting opinion written by Mr. Justice Harlan of the United States Supreme Court. This has reference particularly to the decision upon the Standard Oil and Tobacco cases, but it expresses, I believe, the wide-spread demand that is now evidenced by the fifteen resolutions that are before this Convention, — the wide-spread demand of the people for some change. This is what he writes:

> When the American people come to the conclusion that the judiciary of this land is usurping to itself the functions of the legislative department of the government, and by judicial construction only is declaring what is the public policy of the United States, we will find trouble. Ninety millions of people —
>
> now increased to a hundred millions —
>
> all sorts of people with all sorts of opinions — are not going to submit to the usurpation by the judiciary of the functions of other departments of the government, and the power on its part to declare what is the public policy of the United States.

So you will see, gentlemen, that the dissenters in this committee are not entirely alone; that we have such men as Mr. Justice Harlan, who also recognizes the right of the people to modify or to reform the judiciary.

Now underneath all questions that we are to consider here, from my viewpoint, — it may be a somewhat narrow point of view in the opinion of some of the learned gentlemen who have opposed any change, — but in my point of view the basic question will come before this committee later on, and it is a question that has been touched upon by other speakers who have discussed this matter. It was not my intention, if we could avoid it, to project into this discussion anything relating to the real fundamental, basic question which is to be given consideration later on. But I will mention before closing that the question of labor as a property right is a matter that we cannot overlook and a matter that is vitally concerned with this question that we have now before us.

There is a Latin legal maxim which says: "It is the office of a good judge to enlarge his jurisdiction." One in my position can understand how a craft-conscious organization like the Lawyers' Union should seek to maintain and extend their jurisdiction, but it is equally plain that the people must oppose too great an extension of such power.

Mr. Costello of Boston: There was a statement made yesterday by a member in the second division from Lynn (Mr. Bauer) and repeated a few minutes ago by the gentleman from Springfield (Mr. Donovan) on this question. From the observation of the member from Lynn he had come to the conclusion, after examining the decisions of various States, that those decisions in a great measure were governed by the social and economic environments of the men making them. He has not cited one instance in Massachusetts to bear out that assertion of his. I, on the contrary, have gone to the trouble of finding a decision of great interest to the laboring men of this Commonwealth, one of their landmarks in our legal history, the great case of *Vegelahn* v. *Guntner*, 167 Mass. 92, in which case the dissenting opinion on the right of the laboring man to peacefully picket was given by that aris-

tocrat of aristocrats, Oliver Wendell Holmes. In Massachusetts, then, the case that I have found there seems to warrant the conclusion that if his remarks apply to other States they do not apply in any measure to Massachusetts' judicial history. For one moment may I trespass on your time to read what Oliver Wendell Holmes said in the peaceful picketing case:

> One of the eternal conflicts out of which life is made up is that between the effort of every man to get the most he can for his services, and that of society, disguised under the name of capital, to get his services for the least possible return. Combination on the one side is patent and powerful. Combination on the other is the necessary and desirable counterpart, if the battle is to be carried on in a fair and equal way. . . .
>
> If it be true that working-men may combine with a view, among other things, to getting as much as they can for their labor, just as capital may combine with a view to getting the greatest possible return, it must be true that when combined they have the same liberty that combined capital has to support their interests by argument, persuasion, and the bestowal or refusal of those advantages which they otherwise lawfully control. [*Vegelahn* v. *Guntner*, 167 Mass. 92, 108.]

Those are the kind of decisions in Massachusetts that make us proud of our judicial system. Everybody knows the social environment of the man who gave that opinion, — born, bred and reared an aristocrat. Never by association was he considered a laboring man, and that statement of the gentleman from Lynn is not borne out by the history of our judicial system. I come from one of the biggest labor sections in this Commonwealth, the Roxbury district in the city of Boston. I came here unpledged or unhampered by any pledge to any proposition of any kind. I came here with the mandate of the people over my head to do that which I thought was the proper thing for me to do to protect the Constitution of Massachusetts, — not the Constitution of Illinois, not the Constitution of New York; but to remedy those evils that exist, if any do exist, in the Constitution of Massachusetts. Every man who has taken this floor during this period of debate has confined himself to examples and illustrations that are entirely without the confines of this Commonwealth. Nobody has said for one moment that the evil sought to be remedied by this proposed amendment or the original proposition has ever been in Massachusetts.

Mr. Herbert A. Kenny of Boston: The gentleman refers to Oliver Wendell Holmes as the Justice making those remarks. Was it not a dissenting opinion?

Mr. Costello: Yes, sir, it was a dissenting opinion. I made that remark prefacing my reading of the citation. But, gentlemen, it seems to me that we ought to strike at the root where the evil exists. If the evil exists in the Federal system why not go to the Congress of the United States? And I would suggest that this is the most propitious time that you can go there. It is a time that it is easy to get amendments to the Constitution. You can get it tacked onto the food bill, the same as the Constitution of the United States has been sought to be amended in a certain particular by adopting a proposition and calling it an emergency measure. This matter does not affect Massachusetts. We are here to deal with the Constitution that we were born under, we have lived under and of which we are proud, and let every man here stand for that Constitution that has made us grow to full manhood and prosperity. [Applause.]

Mr. Washburn of Worcester: I had not intended to participate in

this discussion. I belong to the class of "non lawyers" referred to by my friend in the first division. I have, to be sure, an attenuated connection with the bar of which I am very proud, but a connection not close enough to warrant me in discussing with any degree of authority this important question which is now before the committee. I desire, however, to address a few words to the laymen of the Convention which perhaps may have some bearing upon the question under discussion. I am speaking for the moment as a man who now, at least, is earning his bread by the sweat of his brow [laughter], which I think entitles me to the attention of the committee. I said a moment ago that I have had no intention of projecting myself into this debate, which is literally true. The presence of these fugitive notes on my desk is what has prompted me to speak, although they were not prepared with any particular reference to this occasion. I make the statement deliberately that there has been no time during the last 25 years when the criticisms we have heard of the judiciary were less justified than now, and that there has not been a time in the judicial history of Massachusetts when the courts have been more responsive than they are now to what we are pleased to call public opinion. It is for that reason and because of that conviction that I purpose to resist any attempt to make any change in the existing law.

While I am not a practicing lawyer, I venture now and then to read some of the decisions of the courts. I have read enough of them to know that this is not a new question, but has been discussed in this Commonwealth and in the country for over a hundred years.

In 5 Mass. 524, 533, the following statement occurs: —

> It is true that the Legislature, in consequence of their construction of the Constitution, cannot make laws repugnant to it. But every department of government, invested with certain constitutional powers, must, in the first instance, but not exclusively, be the judge of its powers, or it could not act. And certainly the construction of the Constitution by the Legislature ought to have great weight, and not be overruled, unless manifestly erroneous.

And in 1812 Chancellor Waties of South Carolina said upon this subject: —

> . . . The interference of the judiciary with legislative acts, if frequent or on dubious grounds, might occasion so great a jealousy of this power, and so general a prejudice against it as to lead to measures ending in the total overthrow of the independence of the judges, and so of the best preservative of their Constitution. The validity of the law ought not, then, to be questioned unless it is so obviously repugnant to the Constitution that, when pointed out by the judges, all men of sense and reflection in the community may perceive the repugnancy. By such a cautious exercise of this judicial check, no jealousy of it will be excited, the public confidence in it will be promoted, and its salutary effects be justly and fully appreciated.

This question of the interference, as it is termed, of the judiciary with the exercise of the legislative power, is one which always has been recognized, which sometimes has aroused criticism, sometimes even more than that, protest; and sometimes even more than that, a well-conceived determination among certain of our people to revolt against what they have termed the tyranny of the courts. This feeling has been manifested more particularly against the disposition of the courts to restrain the exercise by the Legislature of the police power, and the position has been taken, — my friend from Cambridge (Mr. Hart) took it this morning, — that the people and not the courts should constitute the tribunal by which this question is to be ultimately determined.

Those of us who are called conservatives, on the other hand, prefer to rely upon the influence of public opinion on the courts to correct any evils of this sort that may appear from time to time in judicial decisions.

There is nothing, gentlemen of the committee, that so impresses a truth as an apt illustration. I shall not attempt to engage your attention long, but I wish to refer to three cases in the courts, all of which at the time challenged criticism, complaint, outcry, denunciation of the judiciary, but every one of which within a very few years was reversed; and I mention these cases to demonstrate what I believe to be the fact, that an honest and an independent judiciary, without coercion, in the orderly progress of events, ultimately will correct any mistakes that it may make.

The first case to which I call your attention is that of *Sarah Knisley* v. *Pratt*, 148 N. Y. 372, decided in February, 1896. The court held that a woman employee who had assumed the risk of operating a dangerous machine, not safeguarded as the law required, could not recover for the loss of an arm. This case was overruled in *Fitzwater* v. *Warren*, 206 N. Y. 355, decided in October, 1912. The court held in this case that a servant does not assume the risk caused by a master's violation of the law.

The next case is entitled *The People* v. *Williams*, 189 N. Y. 131, decided in June, 1907. The court held unconstitutional a provision in the labor law of New York which prohibited the employment of an adult female in a factory, — labor legislation, you see, — before six o'clock in the morning or after nine o'clock in the evening. The reason given was that it violated the constitutional provisions guaranteeing to every citizen the right to pursue any lawful employment in a lawful manner, and was discriminative against female citizens in denying to them equal rights with men with respect to liberty of person or of contract. It cannot be upheld, the court went on to say, as a proper exercise of the police power, having for its purpose the preservation of the health of female citizens, since it arbitrarily takes away the right of a woman to labor in a factory during the prohibited hours, without any reference to the number of hours of such labor or the healthfulness of the employment. That was the judgment of the court, denounced as harsh, unfeeling and unsympathetic with the rights of womanhood. How long did it take the court to be influenced by public opinion? Why, it took only eight years, because in a case arising in 1915, — *People* v. *Schweinler Press*, 214 N. Y. 395, — the court sustained a similar statute providing "that no woman shall work in any factory in the State before six o'clock in the morning or after ten o'clock in the evening," and held that the law entitled "period of rest at night for women" violated no provision of the Federal law or State Constitution. Who here or elsewhere says the court is not responsive to an intelligent public opinion? In another case, decided in 1911, a case that was discussed from one end of the country to the other, — *Ives* v. *South Buffalo R. R. Co.*, 201 N. Y. 271, — the court held unconstitutional under both Federal and State Constitutions a law relating to "workmen's compensation in certain dangerous employments" and aroused a torrent of criticism of the courts of New York in particular and the courts of the country in general. How was that condition remedied? Not in any violent way. The Constitution of New

York was amended. Another act was passed, and, in *Jenson* v. *Southern Pacific*, 215 N. Y. 514, decided in July, 1915, the court held that the Workmen's Compensation Law

> is not violative of the Fourteenth Amendment of the United States Constitution for taking property without due process of law . . . and is a valid enactment within the police power of the State for the promotion of the general welfare.

The law has since been declared constitutional by the Supreme Court of the United States.

I ask every delegate who favors now, or ever did favor, the recall of judicial decisions, every delegate who would restrict the right of the courts to pass upon the constitutionality of legislation, to recognize the fact that the courts, sometimes slowly but always surely, have responded to the best public opinion.

Mr. MORRILL of Haverhill: Every delegate to this Convention is under oath to support the Constitution. We who are defending the Constitution here to-day are not indulging in passion or in eloquence in order to try to induce you to remain true to your oath. We are leaving it to the other side to use those tactics, in their attempt to induce you to become backsliders.

Last week I called to the attention of every delegate the fact that four times the Federal Constitutional Convention of 1787 debated, and almost unanimously, each time, defeated the proposition of giving to the courts the right to interpret constitutionality, and also we quoted from our State Constitution, Article XX, Part I, showing that the power to suspend the laws "ought never to be exercised but by the Legislature, or by authority derived from it;" and also quoted Article XXX, Part I, which says that "the judicial shall never exercise the legislative and executive powers, or either of them," — and neither the Federal nor the State Constitution has been amended contrary to what I have just stated, — in other words, it has not been amended in such a way as to give to the courts this authority. And no one in debate has shown that it has been amended in that way, or that the courts ever have been given that authority, despite which you are appealed to to bear down against our Constitution in this respect.

Article VI, Chapter VI, Part 2, of our State Constitution, says that the laws in force at the time of the adoption of our State Constitution shall remain in force until repealed by the Legislature, except in so far as repugnant to the rights and liberties contained in this Constitution. That limited the Legislature and limited the courts in their power, and yet a member of the bar has quoted that same section here and claimed that that gives the courts the right to interpret the constitutionality of legislation enacted later by the Legislature, if I heard him aright. Those are the tactics that have been pursued here each day on this question, to reverse existing requirements, existing restrictions rather; in other words, in their attempt to overturn our Constitution in this respect.

The restrictions defining the power of the courts contained in the Federal and State Constitutions and laws have been cited and claimed to give the courts the power to interpret constitutionality. If you listened quietly, or if you read for yourself what they were quoting from, — and you can understand it better by reading than you can by listening to some one in this large chamber, — if you read for yourself you found out that what they quoted simply defined the power of the

courts in regard to interpreting and enforcing laws, and that is a function the Constitution gives the courts. What they quoted did not give the courts the power to suspend laws or abrogate laws after they had been enacted. Daniel Webster, Alexander Hamilton and other famous forefathers have been quoted as believing that the courts should have this power. What of it? If they thought that, they had a right to their opinion; but their opinion did not prevail with the majority and has not been put in the Constitution, so why should we go by their opinion rather than by the Constitution which we have taken an oath to support? When those forefathers are referred to, those who quote them indulge in great eloquence in defence of the forefathers. Do they believe that those forefathers need any defence here?

It has been said that *ex post facto* laws are forbidden by the Constitution. During my past eight years' service in the Legislature no attempt to pass an *ex post facto* law was made, nor do I understand that any *ex post facto* law has been enacted for a generation or more in this State. Why should so much time be consumed as was consumed in talking *ex post facto* and everything connected therewith when it does not enter into the argument before the Convention, the question here discussed? Why, speakers appear before the aliens of this State and refer to the fact that no *ex post facto* law can be passed, and they also refer to the fact that every citizen of this State has the constitutional right to introduce a law into our Legislature. Those are the two arguments I hear year after year from politicians, yet no citizen can introduce directly a bill into the Legislature; legislative rules forbid it. Even in a monarchy they may ask a representative to introduce a law.

The ex-Attorney-General, who represents large corporations before the Legislature annually, and who yesterday presided in the Committee of the Whole, has on the calendar put in a defence on two propositions, — you will find it on page 21 of the Docket of the Committee of the Whole, documents Nos. 313 and 314, — giving the courts still greater power than they now exercise. I wish you would read those documents (Nos. 313 and 314), and see if you think it wise to adopt them, and whether you are surprised that the man who favors those will also take the floor in a defence of the usurped power now exercised by the courts.

The opposition said, repeatedly, that we who are defending the Constitution want the Legislature to be its own judge of what is constitutional, and the sole judge. We do not make any such claim. We claim that the people, the source of power, should be the final judge if the Legislature oversteps the Constitution, and in this we are backed up by one specific section of the State Constitution itself. Article V, Part 1, of the State Constitution says: "All power residing originally in the people, and being derived from them, the several magistrates and officers of government, vested with authority, whether legislative, executive, or judicial, are their substitutes and agents, and are at all times accountable to them." That is what we have been trying to advocate here for the past several days, and yet we are told that that does not exist in the Constitution and that these other provisions of the Constitution are non-existent. We each and all have the Constitution here. Why should we not support its provisions as long as they are in line with the republican form of government?

The Massachusetts Supreme Judicial Court in the early nineties decided that the Legislature had no right to voluntarily submit any law to a State wide referendum. Think of that in a republic! That decision was quoted on the floor of this House, by a man who is now a delegate in this Convention, after I had had a State wide referendum added to a law by a roll-call vote of 160 to 23 in the House of Representatives. He quoted that as a decision of about 25 years previous. The next two years ex-Senator Tinkham and myself, in turn, introduced an amendment to the Constitution, and got the Constitution amended so that the Legislature should have the power to submit propositions to State wide referendum; and under it many laws have been referred to the people. That was a case where a court was opposed to the right of the Legislature to enact laws and of the people to have that law enacted, but the people decided that the Legislature should have that right and that the Legislature was right in the premises.

I hope that we shall not listen to those members of the lawyers' union, the high priced, high salaried members of the union, who crack the whip over the more humble members of the profession. I am not a lawyer, but it is told to us laymen by many of these humble lawyers of the House that they know we are right, but that they have to practice before the courts, and so they dare not take the chance of standing up for what we are fighting for and which they have taken an oath to support. They tell us in private what they dare not say in public.

Why should we stand by an adverse report, a report which has been turned down by a committee every member of which is a member in good standing in the lawyers' union? Every proposition of this or a similar nature goes before a committee composed entirely of lawyers, and it gets turned down each time it appears, but that does not make it right. The Constitution is superior to any committee composed of lawyers.

Mr. Creamer of Lynn withdrew his motion that the resolution be recommitted to the committee on the Judiciary.

Mr. CREAMER: The announcement I wish to make is that I accept as a friendly amendment the resolution of the gentleman from Brookline, which I think you have before you:

No law duly enacted by the General Court shall be nullified as unconstitutional except by the Supreme Judicial Court with the concurrence of not less than two-thirds of all the judges thereof.

In making this announcement I want to say very briefly that, referring to the remarks of the delegate from Quincy, I do wish to preserve the right of the judiciary to pass upon legislative enactments, but I am just as much opposed to the whims of a judicial majority as to the whims of any other majority. I believe that minority rights are just as much entitled to protection from the whims of a majority of judges as they are from the whims of a majority of the Legislature.

Mr. BROWN: When I heard the gentleman from Boston, for whom I have great regard, cite James Otis in support of his contention, I would that I might find the eloquence of Wendell Phillips, who, when in Faneuil Hall certain men were invoked as being in favor of slavery, talked of the recreant Americans. There never has been given to James Otis all the credit that was due to him as a leading figure that

inspired the Revolution. James Otis was against the decision of English authority. But James Otis, who would have taken the leading position, was deprived of that honor by poor health. As he mourned in his home he made one wish, and that was that if the Almighty was kind to him when he passed out that he might die by a stroke of lightning. That is the way that Otis died, and after that his sister carried on that particular work. Otis was altogether against the idea of the sacredness of authority. And Sam Adams, where was he? On taking the degree of Master in 1743 in Harvard College, he proposed the following question: "Whether it be lawful to resist the supreme magistrate if the Commonwealth cannot be otherwise preserved?" He maintained the affirmative.

Can it be said that Sam Adams, who had so much to do with this Constitution, wrote that the courts were sacred? The leading controversy in the minds of men of the time the Constitution was written was that of centralization on one side and the sovereignty of the States on the other side.

Montesquieu, who gave about twenty years of study to the science of government, wrote his opinions on a system of checks and balances. He said a little something about the English government and its *triparte* formation. That pleased Blackstone, who gave out his commentary about that the same time. Adam Smith produced his Wealth of Nations. Blackstone spoke favorably of Montesquieu and his spirit of laws.

Burke said in his remarks on the freedom of the Colonies that there were more copies of Blackstone read in this Colony than there were in the whole of England; there had been more sold. I am intending to argue that these men knew this whole subject better than it is known in this Convention. I say that on the ground that I hear men again and again here reverberate the idea that this Constitution is so sacred that we must not touch it even though we do think it is insufficient. We should conceive the possibility that these men did not have before them the conditions of to-day. There is a body of men in this Commonwealth with whom their natural right, — their natural right to live, their right to a living wage, their right to protect the woman from labor that crushes, the right to save the child from any labor that is detrimental, — is so closely identified with their sense of duty and their conscience that they line up alongside of the old Abolitionists for the second edition of the "irrepressible conflict"; and to declare that without authority no one may take the bread which they have not earned from the mouth of labor. Stand face to face with the problem. Understand that all through this Nation this conflict is raging. Understand that the social question is here. When you talk about "invisible government," do you mean organized labor, or do you mean organized privilege? If you mean organized privilege I leave it to the gentleman who is attacked to defend it. But if you mean organized labor I undertake to tell you that it wants nothing but the common welfare. Yes, their power does show itself. You had your compulsory arbitration in the Adamson bill, and it is out, and it was labor that took it out, and it was taken out because it was for the common welfare.

The idea of the initiative and referendum has developed because of this conflict. It developed because of these rulings on these social

questions. Woman, on whom we depend for the safety of the republic, evidences what she has been subjected to in her offspring; and her men are not able to defend the Commonwealth and the Nation; they are exempt because of physical infirmities thus imposed upon them. You are face to face with this problem. The Convention can remedy the trouble partially by limiting the power of the judiciary to decide these social questions, — questions that are political rather than judicial. I hope that the gentleman who aspired to be the President of this Convention and who has spoken recently on this subject in West Virginia will expound the same doctrine concerning the judiciary system in Massachusetts and in this Convention.

Mr. Chairman, I am going to give away time enough for my friend, Mr. Creamer. I think I have got rid of all I should at this particular moment and I shall allow Mr. Creamer to make his motion if he is here. [A pause.]

Mr. CREAMER: I move that the amendment offered by the delegate from Brookline (Mr. Anderson) be substituted for mine.

Mr. ANDERSON of Brookline: I regret that so important a subject comes before this Convention in Committee of the Whole for discussion at so inopportune a time. However strenuous we may be in our assertion of midsummer performance of duty, there is such a thing as "midsummer madness." I venture to think that there have been indications of midsummer madness in some of the discussion which has here taken place. I should like to discuss soberly, uneloquently, in common-sense fashion, a matter of real importance, — saying a few things in support of the amendment which I offered yesterday.

It is to repeat what I said yesterday, that I believe that the decision was properly made that the constitutionality of statutes should be finally determined by the judicial, and not by the legislative, branch. I recognize the arguments on the other side. I do not accept them. But I repeat again, when I say that such decisions as have been made, with considerable frequency in some other States, have deprived their courts of the moral power and prestige that ought to have been theirs; that some decisions of the Supreme Court of the United States have lessened the respect and prestige of that great court; and that it is therefore now for us in Massachusetts a seasonable time to consider the same danger that has proved so actual an experience in the Federal court and in the courts of some other States, and to provide, if we may, that ours shall be a happier lot.

Most that was said during the morning, — and I say it with entire respect, — had nothing to do with the subject-matter which was before us; at any rate, nothing to do with this very moderate and conservative amendment. So far as there was athletic eloquence in favor of taking away from the courts the right finally to determine the constitutionality of a statute, I have nothing to say in support of that athletic eloquence. On the other hand it is pleasing to know that the learned gentleman from Worcester (Mr. Washburn) is of the opinion that the courts of New York hold as devoutly as he holds that "woman, lovely woman," ought not to be trammeled in "her *right to labor*." I enjoyed very much the regained freedom of the Harvard professor, — who had been put in durance vile by the eloquent gentleman from Quincy (Mr. McAnarney) under an *ex post facto* law enacted by the Legislature of Massachusetts, consisting of two branches, and signed

by the Governor, — retroacting five years only, I believe. Certainly he rescued that gentleman, with the help of the towering constitutional intellect of some inferior or police court judge, — probably in Quincy, — very nobly from the trammels of a law thus enacted in the very teeth of our Constitution.

But, passing that, — for it is all persiflage, — let us talk sense. The facts are, as we all know, that *all* officials take an oath to obey the Constitution of the Commonwealth; that every legislator and the Governor takes that oath. It is therefore simply a practical question as to where you can get the best final decision as to whether that oath has been kept. That is all there is to the question. Now, I agree that it ought to be finally determined by the judiciary, — not because they necessarily are purer or know more than the Senate or the House of Representatives.

To digress for a moment into the question of comparative merit: I have had occasion in the last three months to read with more industry than ever before in my entire life the debates in the Senate of the United States, for which they have been roundly abused in a good many newspapers. I should like to abuse them myself for some things they have done and have not done. But I am impressed with this fact: You can pick out from the present Senate of the United States nine just as good, just as conscientious lawyers, as constitute the present Supreme Court of the United States. They may not know quite so much about the very last decision that has been made, but they are equally able, they are equally conscientious, they are equally learned in all that makes up the thoroughgoing American lawyer. There never has been a time in the quarter of a century or more that I have known with some intimacy the Legislature of Massachusetts that there has not been in both Houses a substantial number of lawyers just as competent as the average of the men on both benches. I will not say that there have been men in the Legislature *demonstratedly* equal at that time to the best of our experienced judges, but it is a matter of common knowledge that there is hardly a man on the bench now who has not at some time served in a legislative capacity.

And so I come back and say it is simply a question of plain common sense, viz.: — Where can you get the safest and best decision of the question as to whether any particular enactment is or is not accordant with the fundamental law which is binding upon us all? I say that that best and final decision should be made by the judiciary. And my moderate suggestion is for such modification of the present system that this power be exercised only by the court of last resort; that no bare majority should set up its decision, as against the deliberate judgment of both branches of the Legislature and the Governor, not infrequently advised, if the question be a close one, by the Attorney-General, who sometimes knows some constitutional law.

Now, we have had everything here from eloquence about James Otis down to our incarcerated *ex post facto* Harvard professor. Let us brush that sort of stuff all aside and come right to the point. It is undeniable that this Convention will fall very far short of its duty if it does not recognize that there is in America a substantial feeling of distrust in our courts. I rejoice to say that there is less of it in Massachusetts, and deservedly less of it in Massachusetts, than elsewhere. But we should be blind to the signs of the times if in this Constitu-

tional Convention we failed to recognize social and economic facts; failed to recognize that all over this country there have been propositions destructive in *our* view, — in *my* view, — of the very foundations of judicially declared and determined liberty.

It is not a pleasant thing to say, but I think it is a pertinent and fit thing to say: There have been speeches made on this floor which, in lack of enlightenment and in lack of recognition of the signs of the times, seemed to me to be fairly comparable with the speeches of the German Junkers. We cannot afford to have in Massachusetts in these times, in places of important power, men who have the mental and moral equipment, and the social and economic point of view, of the German Junker. It is time to deal, with an open and an honest mind, with facts as they are, with tendencies as they are, with the forces that are seething underneath.

You will pardon me if I give you a little bit of a personal and official touch. I happen to be United States Attorney in this district. It has fallen to my lot in the past three years to deal with certain phenomena, actual or threatened, socialistic, anarchistic, and all the other istic kinds, as never before. That has been, as you will easily understand, particularly true since war was declared. I venture to think that I have an opportunity to know something about what is seething underneath in this country that some of you lack the opportunity of knowing; and I am addressing you now soberly, as a man who yields to no one in pride in Massachusetts history, in confidence in the Massachusetts judiciary, when I ask you to approach this question soberly and with open mind, and not be carried off your feet by flaunting eulogies of "an independent judiciary."

What are some of the suggestions which have been made, — briefly to run over them? I have said enough about this mythical *ex post facto* law which was referred to by the gentleman from Quincy (Mr. McAnarney) this morning, and by the gentleman from Boston (Mr. Balch) yesterday. All that sort of argument goes upon the assumption that the Legislature is either idiotic or corrupt, and the Governor of like kind.

I never have served in the Massachusetts Legislature. It may be I think too well of it. When I hear what some of you who have been there say about each other I think I do think too well of it. Nevertheless, as long as I have any faith in our institutions I am bound to believe, and shall continue to believe, that there is a saving majority of good sense and good morals in the Massachusetts Legislature. I stated here on some occasion, — I have forgotten what it was, — that in the memory of living men there had not been a Governor of either party in this Commonwealth who had not commanded the genuine respect of supporters and opponents alike. If there is any exception it is away back in far history as to which only a very few of those present would admit that they had even a memory.

Now, it is not true, as was suggested by the gentleman from Boston (Mr. Balch) yesterday, that this contest between the legislative and the judicial branches has been limited to what are called "questions of social justice;" it is true that it has been more obvious and more publicly known there than elsewhere. But there is another class of questions in which probably the same problem will shortly be of paramount importance, even if it be not now. There is the question of

finding entrenched under the fourteenth amendment the so-called "Reproduction Cost Theory," as the basis for making rates for public utilities. That means millions, — hundreds of millions, — to rate payers or to speculators and investors. What is the problem? I shall not stop to discuss it, — I shall merely state it.

Under the Fourteenth Amendment the Supreme Court of the United States has been called upon to determine whether rates fixed by State or Federal authority are confiscatory. Unfortunately in most of the States the capitalization of public utilities has borne no sound or approximate relation to the original investment, — the money furnished for the public benefit. We in Massachusetts have had a different theory, — that the capitalization and investment in public utility companies have been supposed to be (and generally have been) approximately equivalent. But in the search for justice as between ratepayer and investor, the Supreme Court of the United States sought for a sound basis upon which to reckon the return from any given schedule of rates. Thus originated the specious and appealing, but fallacious and blind phrase: "The fair value of the property used should be taken as the basis for computing a non-confiscatory rate."

After the enunciation of this doctrine, ingenious gentlemen, some of whom are members of this Convention, noticing that prices have been rising pretty steadily since 1897, claimed that the present "reproduction cost" of the properties was the test of "the fair value" of the properties. They noted also that many of these public utilities owned large quantities of real estate in growing communities. They therefore set up the claim that the unearned increment of this real estate was the equivalent of capital contributed by investors to the public utility. And so we have a judge-made rule of law under which it is sought to compel the rate-paying public to pay five, six or seven per cent upon millions, — hundreds of millions, — of property or alleged property never furnished by the investing public to create or to increase these public utilities. With this grossly unjust claim our Legislatures, State and National, must deal.

It is for the Legislature, — the admitted rate making power, — to determine, as a part of a far-reaching question of public policy, the basis upon which rates are to be calculated to make a fair return. The sole function of the judiciary is to prevent confiscation of private property devoted to public use.

But signs are not wanting that some judges, — and in some courts there is ground to fear a majority of the judges, — may fail to recognize the strict limitation put upon their power of nullifying rates made. Signs are not wanting, — ominous signs, — that under the guise of enforcing the "due-process-of-law" provision in the fourteenth amendment, some judges are willing, even desirous, of putting their own economic theories as law paramount to the enactments of any Legislature, State or National. That tendency must be checked. It is as important to assert and vindicate the proper power of the Legislature, the law-*making* power, as it is to assert and vindicate the proper power of the judiciary, the law-*declaring* power.

I must not pause for further statement of this imminent problem, great as is its importance. I have had occasion for several years to consider it rather critically. But I urge upon your attention that a final determination of that problem may turn upon the question as to

whether a bare majority or not less than two-thirds of the Justices of our court of last resort may be permitted to assert their own views of the effect of the Constitution, as against the views of the Legislature.

Mr. CHARLES P. CURTIS, Jr. of Boston: Under these new social and economic laws, which mostly come up under the United States Constitution and the fourteenth amendment, suppose one was passed by the General Court, and it went before the State Supreme Judicial Court, and four judges out of seven found that it was unconstitutional under the United States Constitution. Now, under this amendment, I should like to ask the gentleman if the State Supreme Judicial Court would then hold it unconstitutional. They take an oath. That oath includes the support of the United States Constitution; and would they feel that this change would apply to them, as they would adjudge a law that came under the United States Constitution and not the State?

Mr. ANDERSON: It is perfectly clear that this Commonwealth of Massachusetts can adopt no Constitution, and enact no law, that runs counter to the Constitution of the United States, and that no court of Massachusetts can make any decision which is finally determinative of any Federal question. Now, the question as to whether a statute is contrary to the Constitution of the United States is a Federal question. The proposed amendment means exactly what it says:

> No laws duly enacted by the General Court shall be nullified as unconstitutional except by the Supreme Judicial Court, with the concurrence of not less than two-thirds of all the justices thereof.

I think that answers the gentleman's question.

Mr. MORTON of Fall River: I should like to ask Mr. Anderson one question. As his amendment reads, it is "with the concurrence of not less than two-thirds of all the Justices thereof." The present number of Justices of the Supreme Judicial Court is, as Mr. Anderson very well knows, seven; and under his proposed amendment what would the two-thirds mean?

Mr. ANDERSON: Five, I take it.

Mr. MORTON: Five — I supposed so. That is all.

Mr. ANDERSON: This is a very moderate amendment, but it asserts what I still maintain is a very important principle. All that I ask to do, Mr. Chairman and gentlemen, — and addressing myself particularly, with the great deference that I always feel for his opinion, off and on the bench, to the chairman of the Judiciary Committee, — is to prevent the possibility of a four to three decision, destroying, nullifying, an enactment of our Legislature, so long as the number of the Supreme Judicial Court remains what it now is, — seven. If it should be increased to nine, then it would take six. (Mr. Morton rose.) I yield for a question.

Mr. MORTON: If I understand my friend right, the only matter in which he would require a two-thirds opinion by the Justices of the court would be a constitutional matter?

Mr. ANDERSON: Quite right.

Mr. MORTON: In every other matter the Supreme Judicial Court would still have authority to decide cases by four to three?

Mr. ANDERSON: Yes.

Mr. MORTON: And the gentleman is aware that the statute under which the Supreme Judicial Court acts provides that in all cases pend-

ing before it four Justices shall constitute a quorum, and, as a matter of fact and as a matter of law, four are required to decide all cases coming before the Supreme Judicial Court.

Mr. ANDERSON: Quite right; and I should like to be corrected by the delegate from Fall River if I have not the correct construction. As I now understand it, four is a quorum. Ordinarily five sit as the full court. I do not suppose that there is any precedent of anything less than the full court, all the judges, ever deciding a constitutional question here; but I know of no reason why under the present Constitution and the present statute a majority of only five could not decide a constitutional question and declare a statute invalid. I should be glad to be informed if I am correct in that.

Mr. MORTON: I assume that you are. Mr. Chairman, I assume that the gentleman is right in what he states.

Mr. ANDERSON: I beg to say, then, — for I doubt if the other members of the committee heard, — that the learned gentleman from Fall River informs me that he considers me right in saying that as the Constitution and the statutes now are, a majority of the full court, which is five, might declare a statute unconstitutional; so that three out of the seven judges could put their judgment against the combined judgment of both branches of the Legislature and the Governor.

Mr. MORTON: What I meant to say was, — what I thought the gentleman understood me as saying was, — that four are required to decide anything and everything; there cannot be any decision by three. A quorum of the court is four, and under the statute a quorum of four, four judges of the court, must take part in and decide the case.

Mr. ANDERSON: Must concur?

Mr. MORTON: Must concur, as I understand it.

Mr. ANDERSON: Then I was wrong in the inference I drew from what the member from Fall River stated; and it remains true, as I now understand it, that no less than four could either declare a statute unconstitutional or decide any other question calling for full court decision.

Mr. MORTON: Yes.

Mr. ANDERSON: But it is true also, as the law now is, that a single judge of an inferior or of the Supreme Judicial Court in Massachusetts may take the responsibility of declaring a statute unconstitutional. I think that has been done since I have been in practice, but I am not absolutely sure that a single judge ever has so declared.

Now, some things were said by the gentleman from Boston (Mr. Balch) yesterday concerning which I want to make one or two observations.

Mr. CHARLES P. CURTIS, Jr. of Boston: I do not think the gentleman quite answered my question. I did not mean whether his amendment would try to do this. I wanted only to raise the doubt whether we had power to do it. Is it not beyond our scope to say upon what majority the State court shall act upon United States matters, — what they shall judge on questions under the United States Constitution? I thought there was some doubt on that, — that the gentleman's amendment did not go as far as that. It seems to me on the great social questions, economic questions, there was such a void left in his amendment that there was not much left of it. That was my only doubt.

Mr. ANDERSON: I regard the question as pretty remote from the gist of the proposition that I put; but, if I understand the question, my answer is that I think the Commonwealth of Massachusetts by its Constitution may limit the power of its courts, — any State court, — to deal with a constitutional question arising under the Federal Constitution except by two-thirds of all the Justices of the court of last resort. The practice to-day, under which four out of seven Justices may declare an act of the Commonwealth of Massachusetts unconstitutional under the Federal Constitution, is grounded upon our own Constitution. The Constitution of the United States does not give the Supreme Judicial Court of Massachusetts power to declare an act of Massachusetts contrary to the Federal Constitution. It is because our court, drawing its powers from our Constitution, is bound to enforce, not merely the Constitution of the Commonwealth of Massachusetts, but the Constitution of the United States, and because the *established practice* is that it acts merely by a majority of the Justices, that that result now accrues. I think I have answered it now.

Coming then, — and I am taking more time than I intended, — to one or two of the points which were made by the gentleman from Boston (Mr. Balch) yesterday, to the effect that judges of some States, even if they had been wrong for a long time and had nullified proper legislative enactments, had at last become educated and seen the light; and that Mr. Justice Brandeis, now on the Supreme Court of the United States, probably would assist to a like desirable result in that court, — I beg to call the attention of the committee to a decision which came down in that court on June 11, 1917, and to suggest to you that there is no ground for believing that the Supreme Judicial Court of Massachusetts is, or for a generation will continue to be, any wiser or more accurate than the present Supreme Court in Washington. For, mark that, we are not making attacks on judges as persons; we are dealing with a system; and with the practical results of that system. And after I have called your attention to what happened this last June in Washington, with a court of nine, I shall call your attention to what happened in Massachusetts less than a generation ago, with a court equally honest and (though as Dr. Johnson said, "comparisons are odious"), I venture to say, equally *able* with the court that we have now or have had at any time during the past twenty years.

There came before the Supreme Court in Washington, No. 273 of the October term, the case of *Adams* v. *Tanner*, Attorney-General of the State of Washington. It involved the question of the constitutionality of a statute of Washington, declaring, in substance, that fees taken by employment agencies from actual or prospective employees for getting jobs should be illegal. In an opinion of a majority of the court, written by Mr. Justice McReynolds, that statute, although sustained by the Washington court, — so that we had the Washington Legislature, including the Washington Governor of course, and the Washington Supreme Court, all declaring it a perfectly valid exercise of the police power, — was held by a majority of the Supreme Court invalid as running counter to the fourteenth amendment.

Mr. Justice McKenna dissented " . . . upon the ground that under the decisions of this court, some of them so late as to require no citation or review, the law in question is a valid exercise of the police power of the statute, directed against a demonstrated evil."

He thought that was enough to say to make it clear that this statute was a constitutional one if not a desirable attempt to deal with a demonstrated evil. Mr. Justice Brandeis wrote a pretty long opinion, which I shall not stop to read, in which he quoted *in extenso* from elaborate studies made of the operation of the employment agency system. I find that there has been such a study in Massachusetts of which I never before knew. Mr. Justice Brandeis pointed out that labor troubles, all sorts of friction between employer and employees, had been promoted by these employment agencies in parts of the country for the very purpose of creating vacancies in which to put new fellows and get new fees, — a practice as vicious as the promotion of litigation by lawyers. In this dissenting opinion joined Mr. Justice Holmes and Mr. Justice Clark. Nevertheless, that attempt to deal with that "demonstrated evil," as Mr. Justice McKenna called it, is thwarted, after years of experimentation, by five judges of the Supreme Court of the United States.

Now, tell me, is the fact that we have been lucky enough not to have any like, — I had almost said, *scandalous*, — exhibition of inability to deal with a great question in a proper fashion, in Massachusetts, in the past twenty years, any reason why, when we are dealing with our fundamental law, we should not stop the gap?

Mr. BROWN: I desire to ask if he (Mr. Anderson) will answer this? Was it not brought out in that case that the trouble was that one could get lists of employees to break strikes?

Mr. ANDERSON: I think that appeared in some of the documents. I have not read Mr. Justice Brandeis' opinion *in extenso* for some days. There are a lot of foot-notes and references to a great mass of literature, with which I never was familiar. My impression is that such a fact is somewhere adverted to. But that has comparatively little to do with the question which I am now discussing before this body, which is a question of constitutional amendment.

The undeniable facts are that there was in official literature the record of long experimentation, with attempts to *regulate* employment agencies, — report after report demonstrating that they could not be regulated as long as there was left alive the mercenary motive of getting from people who wanted and who needed jobs fees for getting them jobs; almost forcing to the conclusion that the only way to deal with it was to wipe out that part of the business, perhaps providing for State employment agencies, as we have done in this Commonwealth.

The point is that five men, sitting in Washington, knowing perhaps little or nothing about the question, and, judging from the opinion, not having interest enough in it even to read the literature pertaining to it, have set their opinion of the constitutionality of that law up against the entire law-making force and the entire judiciary of the State of Washington, and against four out of nine Justices of the Supreme Court.

Now, what is the use of talking about "living under liberty through law," and having our judges enforce, for the benefit of the great mass of the people, the "guarantees of liberty found in the Constitution," when there are five Justices who say one thing is fundamental (constitutional) law and four who say another; and, because that body of nine men happens to be the Federal court of last resort, the five *make* the law both for Nation and for State.

The plain facts are, Mr. Chairman and gentlemen, that we are a court ruled people, that our laws for two generations have been made largely by our courts. Consider for a moment the history of the agitation of the past twenty-five years. Against what laws have we been fighting most of the time? Against judge made laws. Who created the doctrines of "fellow-servant," "assumed risk," "due care," — all those unfit rules that have had to be legislated out of existence? The judges. I would undertake to demonstrate, if I had time and this were the proper place, that in spite of the fact that I never have known a judge who I thought was corrupt, and that I have the profoundest respect for the ability and character of nearly every judge before whom I have practiced for more than a quarter of a century, — I would undertake to demonstrate that there has been more bad (unfit) law made by the judges of America than ever has been made by the Legislatures of America. [Applause.]

Now, I said that I would point out something in our own history indicating that this was not altogether a hypothetical question; that, although we have been very fortunate in the past twenty odd years, both in our courts and in our Legislature, in the care exercised to see that no unconstitutional legislation was enacted, or legislation which was not so clearly constitutional that no reasonable men could differ concerning it, — that we have history not so remote as to be beyond the memory of living man to indicate that some time we might have a court in Massachusetts no wiser or more enlightened than the Supreme Court of the United States.

In the 160th volume of Massachusetts reports, page 63 *et seq.*, are two opinions of the Supreme Judicial Court of the Commonwealth of Massachusetts, then consisting of Field, C.J., Allen, Holmes, Knowlton, Morton, Lathrop and Barker, J.J., dealing with the constitutionality of the interchangeable mileage law. The Chief Justice, for whom I had as profound a respect and affection as for any judge before whom I ever had the honor to appear, wrote an opinion in which he declared that the act was unconstitutional. At the end of the opinion, page 93, he says:

> Mr. Justice Lathrop and Mr. Justice Barker agree that the informations are rightly brought by the Attorney-General, and that the court has jurisdiction, and are of opinion that the necessary effect of the statute is to apply and appropriate individual property to the public use without the owner's consent, and without legal provision for a reasonable compensation therefor; and for this reason they agree that the statute is void, without expressing an opinion upon the other matters discussed in this opinion. *A majority of the court are of opinion that the petitions should be dismissed.*

(The italics are mine.)

Judge Knowlton, afterwards Chief Justice, wrote a dissenting opinion, in which Mr. Justice Holmes concurred, reaching the conclusion that the statute was constitutional. Two of the judges, Judges Allen and Morton, expressed, in no written opinion, the grounds for their views, but joined, as I understand the record, in the conclusion stated by the Chief Justice, that a majority of the judges thought the petition should be dismissed, — which amounted to declaring the statute unconstitutional. That was in the year 1893, twenty-four years ago.

I now desire, having stated all that I have stated, as you will all agree, with very great moderation of language, to read some language used by an official concerning this decision. After sketching the case

and some of the issues discussed, the document which I now am reading, the character and author of which I will disclose later, contains the following. I beg your attention to this, for if what I have said is not worth listening to, what I am about now to read is worth listening to.

This decision is noticeable, as indicating a tendency to depart from the fundamental rule that a statute shall not be held unconstitutional if there is any ground on which, in any view, it can be sustained, and also on account of the position of the court in making it. Three Justices hold the statute unconstitutional on two specific grounds; two other Justices hold it unconstitutional on another ground; and two Justices hold it constitutional. Thus the statute is set aside for reasons no one of which commands the open assent even of a majority of the court. It may therefore properly be inferred that the majority is against each of the reasons assigned. If the same process is carried a little farther, the validity of the most deliberate and important acts of the Legislature may turn upon the opinion of a single judge in which no other judge concurs, and they may be declared void by force of a reason existing in the mind of a single judge which all the other judges agree is no reason. It is not too much to say that such an exercise of the high power to overrule the acts of the legislative branch of the government, within its proper limits a most valuable safeguard of the rights secured by the Constitution, would endanger its existence.

In this connection it is to be remarked that the number of decisions in this Commonwealth against the constitutionality of statutes is much greater in recent years than it formerly was. From a careful examination of the reported cases it appears that from the adoption of the Constitution to the present time —

And this was January, 1894 —

— the constitutionality of two hundred and forty-seven statutes has been considered by the full court, of which forty-one have been set aside. Down to 1860, out of sixty-two statutes drawn in question, ten were held unconstitutional; from 1860 to 1870, out of forty questioned, four were held unconstitutional; from 1870 to 1880, out of sixty-three questioned, thirteen were held unconstitutional; from 1880 to 1890, out of thirty-five questioned, eight were held unconstitutional, and from 1890 to the present time, out of twenty questioned, six were held unconstitutional. The proportion of statutes set aside to the whole number drawn in question was, prior to 1860, less than one in six; from 1860 to 1870, one in ten; from 1870 to 1880, a little more than one in five; from 1880 to 1890, a little less than one in four; and since 1890, a little less than one in three. Within the last four years more statutes have been declared unconstitutional than in the first seventy years under the Constitution.

While this statement does not conclusively prove anything, a tendency so unmistakable can hardly be accounted for on any theory of chances. It indicates an increasing liability of the Legislature to exceed its constitutional power, or a growing disposition of the court to restrain its exercise. The Legislature cannot be unmindful of its own responsibility to guard against unconstitutional enactments; a responsibility which cannot be devolved upon the judiciary and ought not to be shared with it. On the other hand, an eminent judge long ago said, foreseeing the absolute importance of preserving the right equipoise of power between the different departments of the government: "The interference of the judiciary with legislative acts, if frequent or on dubious grounds, might occasion so great a jealousy of this power and so general a prejudice against it as to lead to measures ending in the total overthrow of the independence of the judges, and so of the best preservative of the Constitution. The validity of a law ought not, then, to be questioned unless it is so obviously repugnant to the Constitution that when pointed out by the judges, all men of sense and reflection in the community may perceive the repugnancy. By such a cautious exercise of this judicial check, no jealousy of it will be excited, the public confidence in it will be promoted, and its salutary effects be justly and fully appreciated."

The document from which I read, Mr. Chairman and gentlemen, is the annual report of the Attorney-General of the Commonwealth for the year ending January 17, 1894, and the name of the Attorney-General who wrote it was Albert E. Pillsbury, now a member of this Convention from Wellesley.

I beg now therefore to say to this Convention that there is demonstrated in the most recent history of the decisions of the Supreme Court of the United States, and in not remote judicial history within

our own Commonwealth, that there is need of providing in our Constitution against the disgracing and discrediting spectacle of a four to three decision of our Supreme Judicial Court. I do not want to see our court ever put in that position, and that is one reason why I am saying these things.

Now, I am taking more time than I ought, but I beg you to bear with me again. [Cries of "Go on, go on."] I repeat, if what I say is not worth listening to, what I am going to read you, again, will be worth listening to. One member at least of the Convention ought to be satisfied with my last attempt. I hope my present attempt may satisfy certain of the rest of you, for I am going to read from a book written in very excellent English, —when I finish reading I will tell you who wrote it.

Much was said by various eloquent gentlemen about this serener, higher atmosphere in which dwell the great judicial minds, — free from economic prejudice, free from social prejudice, — tribunals set apart, where no one by indirection, or in any way, except by argument in open court, ever has the slightest influence on the movement of their minds straight through to the absolutely correct determination of the application of our fundamental law to the question before them. I have here a little book by an author whom you will permit me to leave anonymous until I read certain passages dealing with the Dartmouth College case, and the part taken thereon in 1818 by the "Great Defender of the Constitution," Daniel Webster, who was in the Massachusetts Constitutional Convention of 1820, and there delivered such eloquent eulogies on an "independent judiciary."

There is a long sketch of the case and of the argument, in March, 1818, before the Supreme Court of the United States, stating the issues, which, you will remember, were as to whether under the Constitution of the United States the charter of Dartmouth College constituted a contract between the State of New Hampshire and that college. The case is sketched as really a row between Federalists and Democrats, and certain other contending factions in the community. This book, by this anonymous gentleman, proceeds as follows — and listen, for what I am now *reading* is worth hearing:

> March 12 the arguments were closed, and the next day, after a conference, the Chief Justice announced that the court could agree on nothing and that the cause must be continued for a year, until the next term. The fact probably was that Marshall found the judges five to two against the college, and that the task of bringing them into line was not a light one.
>
> In this undertaking, however, he was powerfully aided by the counsel and all the friends of the college. The old board of trustees had already paid much attention to public opinion. The press was largely Federalist, and, under the pressure of what was made a party question, they had espoused warmly the cause of the college. Letters and essays had appeared, and pamphlets had been circulated, together with the arguments of the counsel at Exeter. This work was pushed with increased eagerness after the argument at Washington, and the object now was to create about the three doubtful judges an atmosphere of public opinion which should imperceptibly bring them over to the college. Johnson, Livingston, and Story were all men who would have started at the barest suspicion of outside influence even in the most legitimate form of argument, which was all that was ever thought of or attempted. This made the task of the trustees very delicate and difficult in developing a public sentiment which should sway the judges without their being aware of it. The printed arguments of Mason, Smith and Webster were carefully sent to certain of the judges, but not to all.

"Not to *all*"!

All documents of a similar character found their way to the same quarters. The leading Federalists were aroused everywhere, so that the judges might be made to feel their opinion. With Story, as a New England man, a Democrat by circumstances, a Federalist by nature, there was but little difficulty.

"A Democrat by circumstances, a Federalist by nature." A splendid type to have on the bench.

A thorough review of the case, joined with Mr. Webster's argument, caused him soon to change his first impression. To reach Livingston and Johnson was not so easy, for they were out of New England, and it was necessary to go a long way round to get at them. The great legal upholder of Federalism in New York was Chancellor Kent. His first impression, like that of Story, was decidedly against the college, but after much effort on the part of the trustees and their able allies, Kent was converted, partly through his reason, partly through his Federalism, and then his powers of persuasion and his great influence on opinion came to bear very directly on Livingston, more remotely on Johnson. *The whole business was managed like a quiet, decorous political campaign.*

(The italics are mine.)

There is more to the same effect. The book from which I have just read, pages 89, 90 and part of 91, is the Life of Daniel Webster, by Henry Cabot Lodge. [Applause.]

That is the way the decision was obtained in the famous Dartmouth College case. Now, some of you who are following critically political and economic contests know that by very closely analogous proceedings the decision was obtained in the income tax case, just about twenty years ago.

Mr. BROWN: And does that case bind us all to the principle that a contract in perpetuity was made in the Dartmouth College case?

Mr. ANDERSON: As I understand it, that case determined that all charters issued prior to that time, unless containing some saving clause, were binding in perpetuity. In 1831 this Commonwealth enacted a statute which ever since has saved us from the slavery under which we otherwise should have gone. So far as I understand the general history of legislation in this country, every community in this country by some form of legislation has set itself free from the trammels which otherwise were attempted to be imposed upon the American people by the decision of the Supreme Court of the United States obtained in the way described, — in a manner, as I think, too weak, to describe the actual facts, — by Senator Henry Cabot Lodge, in his Life of Daniel Webster.

Gentlemen, you might as well face the facts here. If you do not face them here you are likely to face them somewhere else, and in a far more offensive form. Here you may face them fairly, dispassionately and constructively. The facts are that there is in this country an increasing distrust of the judiciary, and that we in Massachusetts have been fortunate to escape hitherto much of that distrust. Sitting here in this Convention it is for us to provide safeguards that may leave us in the future in the same happy condition in which we have been during the past generation. I would do nothing more. There is not one of you, the most conservative, — the ex-Justice of the Supreme Judicial Court, to whom I address myself now as a delegate as I have addressed myself to him many times on the bench, — there is not one of you that would go farther than I in maintaining that the very essence of democracy is liberty, under law declared by judges.

Mr. SHANAHAN of Somerville: I should like to ask the speaker in the

second division whether or not his proposed amendment would remove the element of finality which should accompany decisions on constitutional matters by our Supreme Judicial Court.

Mr. ANDERSON: My answer is No. I think the entire effect of this amendment may be stated in two propositions: First, it prohibits any judge of any court, except the court of last resort, from refusing to enforce a statute as unconstitutional; second, it provides, so long as we have a Supreme Judicial Court of seven, that not less than five shall concur in declaring a statute unconstitutional; otherwise the statute stands. I yield to the gentleman from Randolph.

Mr. FRENCH of Randolph: May I ask the gentleman from Brookline if he thinks that the indignation of the populace would be materially diminished if the required majority of the court were made five instead of four?

Mr. ANDERSON: I think it would, Mr. Chairman. I think it would have an effect that would be curative; that it would be a panacea, I do not for a moment claim. I have no belief in panaceas. I know no method of providing for any form of democratic institutions that will not be open to criticism as imperfect; but I say (and I put myself right on this narrow ground, and you may attack it because it is so narrow, if you choose), that to allow the possibility to remain of a four to three decision under our Constitution is wrong and dangerous. I would remove that possibility. I do not now see a better way than to say two-thirds. If some one else wants to say three-fourths I have no quarrel with him. I am not ready to go to the extent of saying that if a single judge holds a statute constitutional and all the others say it is unconstitutional that the one man, even although buttressed by the Legislature and the Governor, should prevail against the majority, after they have heard the case fully argued by able counsel.

Mr. MORRILL of Haverhill: If we are going to give the courts this power I would ask why not require their decision to be unanimous, the same as we require a jury's decision to be unanimous?

Mr. ANDERSON: I think there is some weight in that suggestion. I do not know that this answer is adequate, but what I said a moment ago is the only answer that can be made. My propositions are essentially these: While the Legislature and the Governor are as much bound by their oaths to enact only constitutional legislation as is the court, their opportunity of testing the actual operation of the statute is not as good as that of the court when a case comes before it, and it has the issue presented in the light of actual facts and illuminated by the argument of counsel. Hence I say leave that question to be determined by the court. When you have a majority of the court deciding most questions, this being a case of more than ordinary importance, which already has been passed upon by a coördinate tribunal, — I think that it ought to be passed by at least two-thirds. It is like the veto: When the Legislature enacts a law and it goes to the Governor, and he vetoes it, it comes back, but has to be passed over his veto by two-thirds. That is an analogy that has some weight, but no controlling weight, upon the proposition which I urge.

I now yield to the gentleman from Worcester.

Mr. WASHBURN of Worcester: I should like to ask the gentleman one question. I know his experience has been very wide. I want to ask what cases he can cite in which statutes have been declared unconsti-

tutional in this State by judges of the inferior courts — how many instances of that sort he recalls.

Mr. ANDERSON: I stated before (I think the gentleman probably was out) that I think there have been two instances within my memory in which that has been done, but I am not ready to vouch for that. I cannot tell you what the cases were. I think there are probably men in this room who can remember the cases. The most that I am ready to say is that my impression is strong that there were two such instances within the last twenty-seven years, during which I have been in law practice.

Mr. FINN of Chelsea: I should like to ask the gentleman whether he still would press this measure as he proposes to amend it, if judges were either elected or appointed for a term.

Mr. ANDERSON: I think, if I could contemplate the judiciary of Massachusetts elected or appointed for a term, I should want unanimity, and not merely a two-thirds vote, before a statute was declared unconstitutional. Not to anticipate unduly matters which may come for debate before this Convention, but not having the slightest objection to stating my own view at the present time, — one reason why I would keep the judiciary of Massachusetts within proper limits by an amendment of this kind is because I want to see go no farther than already has gone the opposition to the present method of appointing the judiciary for life. I go on record now as stating the matured opinion of one member of the profession and of this Convention to the effect that by and large we have had the best judiciary in the United States, appointed under the best system, and I am going to stand by it. [Applause.] I know of no amendment that I would vote for unless it be an amendment that judges should retire at the age of 70, subject to special assignment by the Chief Justice, on which I could listen with an open mind. But I am prepared, if changing radically our judicial system becomes an issue before this Convention, to take issue with some people who probably approve of my position taken here to-day, men supporting what I have called the radical movement, and undertake to demonstrate to them that the rights of the mass of the people, — the common man, — are safer under a judiciary appointed by the Governor during good behavior than under a judiciary originating in so-called "*popular* election," but really by the appointment of certain subterranean forces.

And now I close what I already have said at too great length. I beg your pardon for speaking so long. I express my appreciation of the courteous attention that I have had. Let me end by saying that one reason why I want this amendment is that people who now are sharply critical of the judiciary, — not so much the judiciary of Massachusetts as of the Federal judiciary and of the judiciary of other States, — will find the grounds of their opposition narrowed if this wise, conservative amendment which I now advocate is made a part of the fundamental law of the Commonwealth. [Applause.]

Mr. CHOATE of Southborough: I honor and respect the gentleman from Brookline always, but never more than in the expression of those sentiments of respect and admiration for the court which he has just presented to this Convention. The court always has been in a position where it could not defend itself, and it is to such fair-minded and honorable men as my friend from Brookline that it necessarily must turn

for its own justification. It is very true, as he has just said, that the question now has narrowed itself to a point that is almost microscopic. I think I fairly express the views of the delegates here present in venturing to assert that we now are fairly harmonious in the view that the right and power to pass upon the constitutionality of statutes ought not to be taken from the courts, and that there is no other body in which that power can be so well and safely reposed as in the courts. The question now is whether we will change the practical rule by which the decision of those courts always heretofore has been governed, whether we will say that the majority of the court cannot decide certain cases, but that in certain cases which involve the question of the constitutionality of a law five judges out of seven must be required to concur. I ask, in the first place, if there has been suggested to this Convention any abuse of the power that heretofore has been vested in the inferior courts or in the Supreme Judicial Court, and in the exercise of the function which we are discussing, to declare a law repugnant to the Constitution. The gentleman from Brookline (Mr. Anderson) says that in twenty-seven years of practice he thinks he has heard of two cases in which a justice of the inferior court has so decided, not one within his own personal observation; and I may corroborate and perhaps strengthen his statement by saying that in a practice slightly less and less broad than his, but covering at least twenty-five years, I never have known a justice of an inferior court to venture to hold a statute unconstitutional. I think it will be the consensus of the opinion of the bar as represented in this body that judges of inferior courts invariably uphold the constitutionality of a statute unless perhaps some vital question of the liberty of a citizen is involved. Then those courts ought to be free to protect the individual. They have taken their oath to support the Constitution, and one of the guarantees of the Constitution is that the rights and liberties of a citizen, no matter how humble he be, shall not be taken away from him. Now, if there were a well demonstrated abuse of that power the resolution which is advanced by the gentleman from Brookline (Mr. Anderson) might well be favorably considered; but I submit there has been no more sagacious word spoken in this assemblage than that spoken by the gentleman from Boston (Mr. Costello) when he said we ought to be satisfied that the provisions of the present Constitution are wrong and ought to be changed before we venture on a change. We have not been shown that the provisions of the present Constitution in this respect are wrong or even defective.

Now with respect to the change that is proposed with respect to decisions of the Supreme Judicial Court. My friend from Brookline comes here and rather ventures to alarm us by the suggestion that he has been sitting on the lid and he knows what is going on underneath it. Well, I have no doubt he has been doing it, and doing it well. Some of the reverberations escape him once in a while, and we know how serious they are, like that, for instance, which escaped from his office the other day, when we were advised that an armed band of anarchists was going to invade our streets and shoot up our citizens. I wonder if he is not a little bit over-anxious from some sleepless nights sitting upon the lid.

But, after all, am I impertinent when I venture to inquire whether we have not seen the mountain in labor and bringing forth a mouse?

Have the various things that he suggested, the social unrest or disquiet which he has indicated might break out at any time, been so substantially demonstrated that they have got to be met by a change in the number of judges who are to decide a Federal question or a question of the constitutionality of a statute? As the gentleman from Randolph (Mr. French) asked, if it is true, as the gentleman from Brookline suggests, is it going to be appeased by any such change as this? That is why I say the suggestion as made is really microscopic; it is utterly unimportant. It is not suggested in answer to any real danger or to satisfy those who complain of any real abuse. Consider for a moment the practical confusion which would be introduced into our practice in the courts. Every one of these questions of the constitutionality of a statute arises in the course of a litigation, that is, a lawsuit between two parties, usually between private individuals, occasionally between the Commonwealth and one of its citizens. As to judges, the rule that he suggests is that it must be five judges who must concur, but as to all other litigants it is to be only four. I think the point taken by the gentleman from Boston in the second division is well taken. Will it not be true, gentlemen, that with respect to questions arising under the Constitution of the United States, which the Justices of our Supreme Judicial Court have taken an oath to sustain just as much as they have taken an oath to sustain our own Constitution, is it not true that with respect to every question arising under the Federal Constitution a decision of four to three will still be valid and terminative as settling that question? I think, Mr. Chairman, that the rule which we have lived under for a hundred years has proved itself sound, and hope it will be continued.

Mr. ANDERSON: I desire to ask the gentleman from Southborough a question, if he will permit. I was not quite sure whether I understood the gentleman to argue that under our Constitution it could not be provided that not less than two-thirds could declare a statute unconstitutional under the Federal Constitution.

Mr. CHOATE: I think the point made by the gentleman from Boston in the second division must be a sound one, that our Supreme Judicial Court, having taken its oath to support the Constitution of the United States, which restrains in certain respects the passage of legislation by State Legislatures, could still find, in spite of the resolution which he advocates, by a majority of four to three, a law unconstitutional, as being repugnant to the Federal Constitution.

Mr. ANDERSON: May I ask a single further question? Is it not true that the Supreme Judicial Court of the Commonwealth of Massachusetts is absolutely the creation of the Constitution, and that in that Constitution it might be provided, if the Commonwealth saw fit, that our court could decide no question except by unanimity, as a jury may decide nothing except by unanimity?

Mr. CHOATE: I think the question is one of grave doubt. Dealing with a statute which violates the Constitution of the United States is one thing; dealing with a statute which is suggested to be repugnant to the Constitution of the State is quite another.

Mr. HORGAN of Boston: It is with some trepidation that I ask the indulgence of the members of this Convention for a few moments only, not that I hope that I may be able to add anything to the discussion, which already has taken place, that may aid us in arriving at a proper

conclusion on this and the subsequent propositions under consideration, realizing that I do not possess that eloquence, which is a rare gift, and a pleasing adjunct to intellectuality at all times, but at the same time hopeful that I at least will not be charged with that loquacity, which apparently is possessed by some members of the Convention, and which, as has been suggested at least once, indicates not only impudence, but perhaps also ignorance, and believing that the propositions which are under consideration are sufficiently grave and far-reaching to ask you for a few moments to consider with me what has impressed me during the deliberations of this body, and what perhaps has aided me in arriving at solutions of various problems that have been under consideration, and on which we have been called to vote, I crave your indulgence that I may briefly set them forth.

The first thing that struck me was the remarkable statement which has been suggested by at least one delegate, namely, that this instrument under which we have lived for 137 years is archaic. Mr. Chairman, I wish that I too had the wisdom of a Solomon, and did not feel that I was perhaps a pigmy when compared with those great men of that illustrious period, in order that I might also be able to criticize, and perhaps condemn, an instrument under which we have so successfully operated for so many years. But, Mr. Chairman, when we realize that from 1776 to 1780 those men who finally drew that instrument under which we now live, were in the stress of strife, and that their lives and liberty were at stake, and that their knowledge of human nature was at least as great as is ours, and that they had before them the wisdom of the sages themselves to enable them to guide their pens to provide not only for the present but for the future as well, does it not give us cause to reflect that before we alter or add to the present Constitution we must demand that, what has been so aptly suggested more than once to-day, those who propose alteration or addition shall present indisputable evidence that there is grave reason for a change, and necessity for addition? And keeping that thought in mind, Mr. Chairman, I desire briefly to call your attention to a few words from a gentleman who at least once upon a time was considered illustrious, and whose words and thoughts were considered to have been animated by pure and lofty statesmanship and patriotism. I refer to the Father of our Country, George Washington, who, in his final address, among other things, called attention of the people of our country to this:

> It is requisite, not only that you steadily discountenance irregular oppositions to its acknowledged authority, but also that you resist with care the spirit of innovation upon its principles, however specious the pretexts. One method of assault may be to affect, in the forms of the Constitution, alterations which will impair the energy of the system, and thus to undermine what cannot be directly overthrown. In all the changes to which you may be invited, remember that time and habit are at least as necessary to fix the true character of governments, as of other human institutions; that experience is the surest standard, by which to test the real tendency of the existing Constitution of a country; that facility in changes, upon the credit of mere hypothesis and opinion, exposes to perpetual change, from the endless variety of hypothesis and opinion.

And, Mr. Chairman, because I bow to that superior judgment, because I feel from a careful study, a thoughtful and, as I hope, an intelligent analysis of the conditions which confronted not only this country but also this State, when the respective Constitutions were

finally agreed upon, with the firm conviction, Mr. Chairman, that those men had almost as much intelligence as is possessed by some of the Solomons to whom we have been forced to listen during the debate upon this and the other proposition, I at least am doubtful, and it is with timidity that I determine as a delegate either upon this or any subsequent proposition to change an instrument which has been so successful, which has afforded prosperity, happiness and general content, until and unless absolute necessity has been shown.

Mr. Chairman, first of all I want to emphasize that as far as the effect of the various arguments presented here to-day upon my mind have been in favor of this substitute proposition or the immediately subsequent proposition, I am absolutely convinced that no necessity for a change has been manifested here. What gentleman who has addressed this Convention has pointed to specific instances in this Commonwealth under the present judicial system by which personal, individual property or social wrongs or economic conditions have been so affected or changed that it is vitally necessary to our future happiness and prosperity that this proposition should be submitted by us to the people of this Commonwealth? We, as I understand it, are sitting as the jurors of the people. We are supposed to consider the evidence, and to recommend as propositions favorable for action by the people of this Commonwealth only resolutions which we are convinced ought to be considered by them because the evidence has been such that in conscience and justice we must recommend the adoption by the people of those recommendations.

I may venture, I think, to give an additional reason, perhaps, that might be suggested, namely, that the conditions which now exist are such that if we care not only for the present but for the future, we must provide under a sufficiently elastic system for conditions that may thereafter confront us that have not been sufficiently substantiated here to justify me, as one delegate, in supporting this or any of the subsequent propositions. I trust that I am not one of those with the athletic eloquence which has been so aptly described by the gentleman from Brookline (Mr. Anderson). At the same time, I hope that I may not be described as that bird of Japan whose sole note is "Me, Me, Me." I hope that most of us at least in considering this and other questions will consider them from the broad-minded viewpoint of agents and representatives of the public weal, with a desire to submit and favor only propositions which, in our humble judgment, as best we may determine, will be beneficial, and will at least merit our support at the polls.

I want to add only one other thought, Mr. Chairman, because I have listened with much respect, appreciating his ability as well as his experience, to the distinguished United States District Attorney from Brookline, who is an honorable delegate in this Convention, and that is this: With 247 legislative enactments, with the constitutionality of which the Supreme Judicial Court has been compelled to pass upon, he has called our attention to the fact that, in 41 of those cases, it was declared by the Supreme Judicial Court that those enactments were unconstitutional; but yet he has failed, and I think that is an important detail, to indicate what the vote of the Supreme Judicial Court of Massachusetts, upon those various propositions declared unconstitutional, was. Personally, I should very much like to know, if at any

time, on any one of those propositions, more than two judges favored the constitutionality of those forty-one propositions.

Mr. MONTAGUE of Boston: The gentleman asks a question which I think can be answered now if he desires to have it answered. In the fifty-nine cases, — forty-one up to 1894, fifty-nine all told, — in which the constitutionality of any act or part of any act or of any resolve of this Commonwealth has been held unconstitutional, in only seven cases is there any indication that the judgment of the court was not unanimous, — seven out of fifty-nine.

Mr. HORGAN: Unless additional evidence may be adduced, it seems to me that that perhaps is the best evidence that we ought to require that the Supreme Judicial Court, in deciding on the constitutionality of the legislative enactments, has not only given careful consideration and thought in this State to those propositions, but, also with the knowledge that no particular criticism has been levied at any one of those decisions, it ought to convince us of the fact that, working under this system, no injustice has been done. As experience is the best lamp by which to guide our footsteps, and, as we have successfully labored under this system that we now are operating under, not only wisely but judiciously, it is a duty that we owe to the people of this Commonwealth not to recommend any change in this or in any other proposition unless, as I already have indicated, evidence of such a character can be presented that we must be able to say, because the common good is the chain that holds all the people together, that it is necessary to make this change. We ought not to make any recommendation rather than make a mistake which may bring retribution in the future with it. [Applause.]

Mr. FISHER of Westford: The present document and the two succeeding documents have brought into discussion this question under two phases. I understand my honored friend from Brookline (Mr. Anderson), as well as my honored friend from Lynn (Mr. Creamer), do not favor the first phase of this question, for which I think they are entitled to a considerable degree of credit.

Is there any common ground on which we can discuss or begin to discuss the first issue here, to wit: The question of whether or not the Supreme Judicial Court should have the determination of whether a statute is unconstitutional, or void for any other reason? Unconstitutionality is not the only reason why a statute or a previous statute at times has not been effective in this Commonwealth, and with that I think we can start on a common ground. Supposing the Legislature of 1917 passes an act which raises an issue whether it is inconsistent with an act of 1916. That issue has been raised many, many times, and the Supreme Judicial Court, as those of us know who have served in the Great and General Court, sometimes says in a bit of irony that "the Legislature in its wisdom" did so and so. If the issue is raised whether or not the act of 1917 repeals the act of 1916 in whole or in part, who is to decide the question? Is there a delegate here who would say other than that the Supreme Judicial Court or the lower courts in the first instance were the arbiters of that question? However, I have heard no one as yet argue that such was not the case. And if then the Supreme Judicial Court, as the last court of judicature, has the decision by the unanimous approval of the populace at large, to say that the act of 1916 violates the act of 1917 and therefore the

act of 1916 is void, what is the situation when the act of 1917 violates the great fundamental law which the people have embodied in their Constitution? It is only an extension of the principle. And so it seems to me that the delegate from Quincy (Mr. McAnarney) this morning has annihilated the first proposition which is presented in the resolutions here. And now let us take up the second proposition, which has more assumed merit in it, but which, it seems to me, when you diagnose the situation, has at least one fatal defect.

You start on the basis that constitutional rights are the only great rights which are accorded to us under the law. That is not true. Some of the greatest legal questions which arise in all our courts of justice do not involve constitutional questions. They involve the very life, liberty, property, and home of ourselves and our families. Let us stop to consider the matter just a moment and take a practical view of the question, and perhaps even a ridiculous view of the question, because it is when we view it in that light that we sometimes get back to facing facts.

Suppose the fair city of Lynn, or the Hub of the Universe where we are now seated, or the aristocratic town of Brookline undertakes to pass an ordinance limiting the perigrinations, if you will, or the amours of our old friend Mr. Thomas Cat, whose limitations perhaps in some extent coördinate with the human race, as was so ably expounded by the gentleman from Barnstable (Mr. Bodfish) yesterday in the debate on the abolition of capital punishment. Either my friend Sir Thomas Cat has got to reform his methods of living or else the owner has got to limit his nocturnal visits. That is an extreme case, but time and time again the question has arisen whether or not certain legislative enactments which authorized the passage of ordinances were constitutional; for instance, in what were called the Chelsea rag cases and other matters. Those cases which went to the Supreme Judicial Court of Massachusetts involved no really serious fundamental questions as matters of constitutional determination.

What is the issue on the other side? Not many years ago in this Commonwealth a man was tried for murder. He was defended by one of the ablest counsel that the Commonwealth of Massachusetts could afford, the late lamented ex-Governor Long. The jury convicted the defendant. The matter went to the Supreme Judicial Court. He was convicted because the Superior Court, following a previous decision of the Supreme Judicial Court, had decided that certain evidence was inadmissible. The matter came before the Supreme Judicial Court and after careful consideration the Supreme Judicial Court reversed its former decision and decided that the evidence should have been admitted. A retrial resulted, and, Mr. Chairman, the defendant was acquitted. I have heard it said, rumor has it, that a guilty man escaped, but I pass no judgment on that question. This was not a constitutional question. And yet the decision of that question whether that man should have a retrial with life and death hanging in the balance was to be decided on the majority opinion of our Supreme Judicial Court. It was not decided on a majority, but under this supposed amendment it still would remain to decide by a majority of the court, while the little, I might say in comparison the inconsequential, question of a local city ordinance would have to be decided by a two-thirds vote of the Supreme Judicial Court. Go home and stand on the street

corner, sit down in your office and talk with your neighbor in his home, and when he asks you: "Why in your wisdom does our Constitution require that the decision of a practically immaterial question," — because some of your constitutional questions are practically on that basis, — "why do you require a two-thirds decision of the Supreme Judicial Court in order to declare that act unconstitutional, when in a case where the very life and liberty of a man are at stake you let the same court decide it by a majority decision?" If you can answer that satisfactorily to your neighbor, proceed to support the resolution. I cannot, and for that reason among others I am opposed to this proposed change.

And now, Mr. Chairman, the gentleman from Boston who sits in front of me (Mr. Lomasney), who always is solicitous of the rights of the people, in speaking on the question of less than unanimity of a jury in deciding a verdict in civil cases, said: "You are making an opening wedge;" and I agreed with him. And I say here now: You are beginning to make an opening wedge; you are making practically class constitutional enactment. One man goes before the court on one proposition and it takes two-thirds of the court to decide that the act was unconstitutional. Another man goes before the same tribunal with the life of his brother, sister, son, daughter, father, mother at stake, and the majority of the court say the word whether that man shall practically live or die, as was done in the case which I cited to you. Every one is familiar with the case. And they tell us of the distrust of the people in the courts. Every lawyer has had his hour of distrust when the decision was against him.

Mr. ANDERSON: Will the gentleman from Westford bring to the attention of the Convention a single instance in the history of this Commonwealth, or indeed in the history of any other of the States, where they have hung a man on a four to three or a five to four or a bare majority opinion?

Mr. FISHER: I did not catch the question.

Mr. ANDERSON: I understood the gentleman to argue, that a mere majority should be adequate to determine a constitutional question, because on a question involving life, death or liberty we left it still for a mere majority decision. I ask if in the history of the courts of Massachusetts, and indeed I should like to ask if in judicial history outside of the courts of Massachusetts, any man's life ever has been taken under process of law by a mere majority opinion with dissenting opinions. I ask the gentleman who is now addressing the committee.

Mr. FISHER: I did not contend that the decision was a majority decision, but that is the situation as far as the legal condition is concerned, that such a decision could be rendered involving the life or liberty of a man, when another question, inconsequential as compared with the life and liberty of a man, has got to be decided by two-thirds of the same body. I have been reminded since the honorable gentleman from Brookline took his seat that there was a decision in New York State five to four. We have heard here precedents cited. We have heard here theories of government expounded to prove to us that some change should be made to govern us in our decision of this question. But, Mr. Chairman, let us come back home. We are in the Commonwealth of Massachusetts, the pioneer of constitutional government. And if we exercise what I believe we are going to exercise, a

safe and sane attitude toward our future constitutional provisions Massachusetts still will lead the world in the matter of written constitutional government.

And now, Mr. Chairman, what are you asked to do? You are asked, I say, to make this change in the Constitution, changing the simplicity of the rule of the Supreme Judicial Court, the uniform rule of equal justice to all on exactly the same basis of a majority decision, and now you are going to elevate one step and say: "It depends on what your rights are, — not the question of whether life and liberty are involved, — but the question of what your rights are, constitutional or otherwise, on what number of the Supreme Judicial Court are obliged to act in order to settle the question." You are putting a new factor into our constitutional government, and, Mr. Chairman, you are substituting for the rule of reason a rule of percentage.

Mr. Broderick of Waltham: Yesterday in the Committee of the Whole I voted to recommend to the Convention the adoption of resolution No. 47. I did so because I believe firmly in the second part of that resolution, which provides that a unanimous opinion of the Supreme Judicial Court shall be required to declare a legislative enactment unconstitutional. I have no intention and no desire to prolong the discussion of this resolution. I rise only to state briefly some of the reasons which prompt me to support it.

Under our Constitution the Legislature is constituted the law-making body of the State. For that reason I believe that any law enacted by the Legislature should not be lightly set aside. Admitting that as a matter of expediency and perhaps of necessity the Supreme Judicial Court should have the power to review acts of the Legislature, yet it is a most extraordinary power to vest in any body constituted as is the Supreme Judicial Court to override the acts of the Legislature, which is composed of representatives elected by the people, elected annually, therefore coming direct from the people, who, after all, are the source of all power under a democratic form of government. And the exercise of that power by the Supreme Judicial Court should be surrounded by every possible safeguard and limited by every reasonable and proper restraint in order to avoid abuse.

The Legislature in enacting laws is surrounded by certain safeguards to guide its action and to prevent it from passing any law that violates a provision of the Constitution. But if it should enact a law that clearly violates any provision of the Constitution there can be no question but that it will be held by a unanimous opinion of the court to be unconstitutional. But when the Legislature enacts a law, and a question is raised concerning its constitutionality and the question is so close that any Justice of the court, for instance, a Justice like former Chief Justice Homes, should hold such law to be constitutional, then, in my opinion, that law should continue to have full force and effect until it shall be declared to be unconstitutional by a unanimity of opinion of the Supreme Judicial Court.

The gentleman in the second division who is in charge of this report (Mr. Montague) has asked repeatedly for an instance in the history of the Supreme Judicial Court decisions of this State that would afford a reason or a justification for the adoption of this resolution. My answer is the dissenting opinions of former Chief Justice Holmes and the dis-

senting opinions of other Justices of the court. These are a justification and a complete justification for its adoption.

The Committee of the Whole rejected Mr. Anderson's amendment of Mr. Creamer's resolution (No. 47) by a vote of 37 to 137, Wednesday, August 1, 1917, and, on the same day, sustained the adverse report of the committee on the Judiciary on the three resolutions, — Nos. 47, 97 and 212.

On the following day, August 2, the measures were considered in Convention and a call of the roll was ordered when Mr. Creamer's resolution (No. 47) was acted upon. It was rejected by a vote of 161 to 77. The other resolutions were rejected without division.

XI.

PUBLIC INTEREST IN NATURAL RESOURCES.

Mr. E. Gerry Brown presented the following resolution (No. 231):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The properties of water, coal, iron and oil in their original states are among the essential rights of the collective body of people as a common heritage; and therefore cannot be held by any title as private property except as a trust to be exercised and administered equitably with a recognition of common ownership.

The committee on Public Affairs reported that the above resolution ought to pass in the following new draft (No. 321):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The conservation, development and use of agricultural, mineral, forest and water resources of the Commonwealth are matters of public interest. The General Court may therefore authorize the taking, by purchase or otherwise, of such lands or easements or interests therein, including water and mineral rights, and may enact such legislation as may be necessary or expedient for securing and promoting the proper conservation, development and use thereof.

Mr. Clapp of Lexington moved that the resolution be amended by striking out, in line 3, the word "agricultural".

Mr. Charbonneau of Lowell moved that the resolution be amended by inserting after the word "taking," in line 6, the words "by such public body as it may designate,".

Mr. Pillsbury of Wellesley moved that the resolution be amended by inserting before the word "agricultural," in line 3, the word "undeveloped".

Mr. Montague of Boston moved that the resolution be amended by inserting after the word "agricultural", in line 3, the words "land and of".

Mr. O'Connell of Boston moved that the resolution be amended by striking out, in lines 3 and 4, the words "agricultural, mineral, forest and water", and inserting in place thereof the words "all the natural".

Mr. Dresser of Worcester moved that the resolution be amended by inserting after the word "mineral", in line 4, the word "and"; by striking out, in line 4, the words "and water"; and by striking out, in line 8, the words "water and".

The resolution (No. 321), with the pending amendments, was recommitted to the committee on Public Affairs Wednesday, July 25, 1917.

That committee reported the following new draft (No. 344) Wednesday, August 8, 1917:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The conservation, development and use of agricultural, mineral, forest and water resources of the Commonwealth are public uses for which the Legislature may take or authorize to be taken, by purchase or otherwise, lands or easements or interests therein, including water and mineral rights, and may enact legislation necessary or expedient for securing and promoting the proper conservation, development, use and control thereof.

The new draft was read a second time Thursday, June 13, 1918, being the first of the proposed amendments to be debated in the 1918 session of the Convention.

Mr. Robert P. Clapp of Lexington moved that the resolution be amended by striking out, in line 3, the word "agricultural,"; and by adding at the end thereof the following paragraph:

The conservation, development and use for agricultural purposes, of low, swampy, waste or otherwise undeveloped lands are public uses for which the Legislature may take, or authorize to be taken, by purchase or otherwise, lands or easements and interests therein.

These amendments were rejected, by a vote of 31 to 90.

Mr. Frank E. Lyman of Easthampton moved that the resolution be amended by striking out, in line 3, the word "agricultural,".

This amendment was rejected.

The resolution (No. 344) was ordered to a third reading Thursday, June 13.

The resolution was read a third time Wednesday, July 24, 1918, in the following form as changed by the committee on Form and Phraseology (No. 379):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The conservation, development and utilization of the agricultural, mineral, forest and water resources of the Commonwealth are public uses, and the General Court shall have power to provide for the taking, by purchase or otherwise, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof and to enact legislation necessary or expedient therefor.

Mr. Robert P. Clapp of Lexington moved that the resolution (No. 379) be amended by striking out, in line 3, the words ", development and utilization", and inserting in place thereof the words "and development"; and by striking out, in lines 9 and 10, the words ", development, utilization and control", and inserting in place thereof the words "and development".

These amendments were rejected, by a call of the yeas and nays, by a vote of 79 to 106.

Mr. Augustus P. Loring of Beverly moved that the resolution (No. 379) be amended by striking out, in line 4, the words "and water resources", and inserting in place thereof the words ", water and other natural resources".

This amendment was adopted.

The same gentleman moved that the resolution (No. 379) be amended by striking out, in lines 6 and 7, the words "by purchase or otherwise", and inserting in place thereof the words "upon payment of just compensation therefor".

This amendment was adopted.

Mr. David Mancovitz of Boston moved that the resolution (No. 379) be amended by inserting after the word "taking", in line 6, the words "by the Commonwealth".

This amendment was rejected.

Mr. James P. Richardson of Newton moved that the resolution (No. 379) be amended by striking out, in lines 6 and 7, the words "taking, by purchase or otherwise", and inserting in place thereof the words "purchase, or taking by eminent domain".

This amendment was withdrawn.

Mr. William S. Kinney of Boston moved that the resolution (No. 379) be amended by striking out, in line 9, the word "proper".

This amendment was rejected.

Mr. Patrick S. Broderick of Waltham moved that the resolution be amended by adding at the end thereof the words " , and the standard by which the value of water rights and water privileges shall be determined shall be the volume of power utilized by the owner or owners or lessees thereof".

This amendment was rejected.

The resolution, as amended, was passed to be engrossed Thursday, July 25, by a call of the yeas and nays, by a vote of 127 to 74, as follows:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment.

The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the Commonwealth are public uses, and the General Court shall have power to provide for the taking, upon payment of just compensation therefor, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof and to enact legislation necessary or expedient therefor.

The resolution was considered again Wednesday, August 7.

Mr. Frank F. Dresser of Worcester moved that Rule 53 be suspended that he might move that the resolution be amended by striking out all after the title, and inserting in place thereof the following: —

Section II of chapter V of part the second of the Constitution is hereby amended by inserting before the words "to countenance and inculcate the principles of humanity" the words "to foster the development and use of the waste or undeveloped natural resources of the Commonwealth;"

The Convention refused to suspend the rule, by a call of the yeas and nays, by a vote of 114 to 91 (two-thirds of the members present not having voted in the affirmative).

Mr. Albert E. Pillsbury of Wellesley moved that Rule 53 be suspended that he might move that the resolution be amended by striking out, in line 3, the words " , development and utilization", and inserting in place thereof the words "and development"; and by striking out, in lines 9 and 10, the words ", development, utilization and control", and inserting in place thereof the words "and development".

The Convention refused to suspend the rule.

The Convention voted, Wednesday, August 7, by a call of the yeas and nays, by a vote of 136 to 86, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 172,111 to 102,768.

THE DEBATE.

Mr. Buttrick of Lancaster: I do not know whether the other members of this Convention have had an opportunity to read this measure carefully. I have looked it over a little and I must confess that I am somewhat at sea as to what it means. I think it would be well to have some explanation as to what it really provides for. I hardly think the gentleman who has charge of this measure is here, but possibly some other member of the committee, or some member of this Committee of the Whole, can explain the matter to us.

Mr. Hobbs of Worcester: The chairman of the committee which reported this measure is unavoidably absent, but I will endeavor to explain, as briefly as I may, the reasons for the committee reporting it.

The committee had before it several propositions, one being No. 231, which related to the public interest in natural resources. I do not think that any member of the Convention will seriously question but what there really is a public interest in our natural resources. Up to date, owing to the abundance of our natural resources, we have been more concerned with private interests in those resources than with the public interest. But unfortunately we are approaching a time when we have to count our resources a little closer, when we realize that they are by no means infinite and that the public interest demands the best and most economic use thereof, to the end that the public may obtain the greatest possible benefit from such as it has. The question of conservation and development is therefore one that in recent years has come to the fore. It is a problem that is, I think, one of the burning problems of the day. The United States government has spent enormous quantities of money in the development of waste lands and is endeavoring to conserve, as far as it can, both forest and mineral resources.

Now, in Massachusetts we have no very extensive mineral resources; our forest resources are not so great as they might be. Nevertheless, we have some of both. We have considerable tracts of land that are marsh land and that the State might well develop.

It is in order that there may be explicit recognition of the right of the Commonwealth to protect itself through the use of its own resources to the best advantage that the committee have reported this resolution. It is in order that there may be no question as to the power of the Legislature to exercise that right. There is some question as to whether the conservation of natural resources is in all respects a public use as that term is used in the present Constitution. For that reason it would seem that there is cause for the adoption of this amendment, and I trust that the Committee of the Whole will see fit to recommend it favorably.

Mr. Brown of Brockton: That is my resolution, — at least what there is left of it. I introduced a resolution containing the fundamental declaration that there could be no just private property in natural resources. The gentleman of the committee says that there is nothing in the Constitution upon that subject. There were very few natural resources when the Constitution was framed. The only one which was in the purview of the makers of the Constitution were our ponds; and there the principle is carried out. The larger ponds are held for the collectivity. The committee have reported, and I hope that it will pass. The time will come when the legality of the title to those natural resources will be questioned. It will be so considered, I have no doubt. It enters at this moment into the question which confronts and perhaps some time may shock this Nation, — that is, the high cost of living. To illustrate: Some people obtain a piece of property by the bounds as set forth in the deed; then they discover that underneath the ground are vast resources of iron. They then proceed to create a monopoly in iron. Then the market price of iron is controlled, as it is controlled now by the steel corporations. Thus we have the price of railroad rails fixed so that steel stock, the common steel stock which is mostly water, is yielding nearly 100 per cent profit. The profit, or part of it, is made out of the price that is charged for the railroad rail. The rail is laid to transport the raw material in the fields to the factories that transform it by the labor of people therein.

Then the railroad carries that product from the laborer back to workers of the field. Every time that the material or product is moved then labor pays a tribute to those who own the iron. . They have taken wealth which they did not earn. Thus they profit at the expense of labor by owning valuable resources. They did not create that value. The value is a natural, inalienable inheritance belonging to all of the people. It certainly is fundamental. It is closely connected with the declaration that a man has a right to life, that he has a right to acquire property, and that he has a right to be protected in such labor. While he labors his wages change every time that the price of the commodities change into which he exchanges his wages. The prices exacted by owners of natural resources are embodied in these commodities. Therein comes the robbery, if I may use so harsh a term, but it certainly is robbery morally if you take something and do not render an equivalent. Because of the lack of restraint upon the acquiring of these titles there has grown up a new kind of property, a dangerous kind of property. It was not contemplated by the makers of the Constitution, or those who revised it in 1853. The extent of such resources was unknown. Then property was a horse or a cow or a house, but it was so clearly property directly connected with a man's labor that any man would be a robber who undertook to take from him that property, without proper equivalent. Monopoly in natural resources has taken to itself a privilege. It exercises a taxing power. Thus there is enthroned outside of this government a monopoly and a privilege which proceeds to fix its own price upon what it calls its property. I suppose it has a clear right so far as it can exercise any influence here to prevent the touching of these titles. The great trouble in our economic situation is because the purchasing power of the producers of wealth is never stable; that something is taken from it without full equivalent being rendered. Throughout this Commonwealth as well as in other States people have nothing left; it takes all they can get to pay the price to live. Once or twice has this fact been touched upon in this Convention. The gentleman from Somerville (Mr. Underhill), trying to save what to him seemed to be an unnecessary expense for the printing of these Convention reports, sounded the word that in this Commonwealth there is suffering. He tried to draw attention to the condition of a number of people. It seems to me that you might almost hear the men who framed this Constitution, whom you have quoted here, ask: "What have you produced with the Constitution which we gave to you? What have you produced with that Constitution which intended that people should own their homes, sit under their own vine and fig tree so that no man make them afraid? Have you any less poor in this Commonwealth than when we founded it? Have you so far exercised the powers of government that the laws you have passed command respect by the very fact that they were passed and the people recognized that they were passed for their interest? Have you so administered the affairs of this Commonwealth that there is no such thing as a class feeling to-day in Massachusetts? Are there any people who feel that they are not being legislated for and that it is only the corporations and the interests that receive attention? Have you so acted?" You answer it. I am not going to answer it for you. But whether you answer it or not, the conditions are here in this Commonwealth.

This resolution touches the subject. It provides if the exigency shall arise in this Commonwealth that ownership of natural resources can be dealt with as all affairs ought to be dealt with in the Commonwealth, — on the basis of equity. It is going to recognize ownership or interests and authorize the Legislature to take that property at whatever cost might be fair. That is something. To my mind it is more important than your sectarian amendment, because it affects all the people. If there is a power in this State or a power in this Nation that exercises the right to tax the wealth production and to take from the wealth producers more than it gives in return then you have got to tackle that power exactly as you tackled the slave power, because the principle is the same. If any man can take a part of your earnings without rendering you an equivalent, he to that extent is your slaveholder. You may be free to come and go as you please, but he touches every point of your life, your wages or your earnings, whatever they may be, and through the power of the law he makes you pay if you take any of his goods whatever at the price he sees fit to demand in return. It is against public policy, and you never should and you never can have given a good title to natural resources, because it is selling yourself into slavery. If, for instance, a man may hold an absolute title to the coal fields, then he may charge what he pleases for coal. If coal is essential for your life and you have sold the title to the coal and the title is absolute, then the owner of the coal can command you to work at his price for the coal. You cannot escape it. That principle of ownership is the principle of the slaveholders' ownership. That ownership seeks to control the government. That ownership is too powerful. The people are feeling it. They are voicing it. It is the natural voice that teaches them that it is an injustice. So Massachusetts, if it passes this resolution, may be the first to declare that no honest title has been gained to these resources. I hope that this resolution may pass.

Mr. Clapp of Lexington: I think perhaps I ought to say a word about this matter as a member of the committee on Public Affairs, which has reported it. For all that appears on the calendar, this was a unanimous report of the committee. That, however, was not the case. I do not remember how many men voted in the negative, but certainly I did for one. It was understood that on this and certain other matters, though reported with no formal dissent, our rights should be understood to be preserved.

Now, my objection, or at least one objection, to adopting this resolution is the vagueness and uncertainty of its meaning. For one, I am utterly opposed to engrafting any amendment upon our existing Constitution where the meaning of what we add is not clear, definite and certain. I do not believe that there is any man in this Convention who can tell exactly what this proposition means.

I wish to call the attention of the members of the Convention to the fact that another resolution has been recommended by the committee which deals with the same subject-matter, though not with coal, oil and iron. That subject would hardly need to be dealt with; we all know there are not any such minerals in this State. But the other resolution does deal with water rights, timber rights and other things of that nature. I will ask you to read it; it is resolution No. 321; or if you will permit me I shall read it myself:

The conservation, development and use of agricultural, mineral, forest and water resources of the Commonwealth are matters of public interest. The General Court may therefore authorize the taking, by purchase or otherwise, of such lands or easements or interests therein, including water and mineral rights, and may enact such legislation as may be necessary or expedient for securing and promoting the proper conservation, development and use thereof.

Now, I think, sir, that that proposed amendment has some merit and would be worthy of your careful consideration. In my opinion it is slightly too broad and should be pared down a bit. But the point I am making now is that whatever merit there may be in No. 231, which the gentleman from Brockton has just discussed, may best be taken care of in connection with this proposed amendment, document No. 321.

Mr. BROWN: I wanted to know if the gentleman understood me as accepting the resolution under discussion as a substitute for mine, — that I am satisfied with it? I am speaking for the committee's report; I am satisfied with it.

Mr. CLAPP: I did not quite gather that. I understood the gentleman from Brockton to be arguing in favor of the adoption of resolution No. 231, to which I am opposed, — if that is the one that we are now considering on the docket. I am trying to make it plain that I hope No. 231 will be rejected.

Mr. PILLSBURY of Wellesley: I should like to confer on the committee, on this and all future occasions, the great favor which I have bestowed upon it and upon the Convention more than once, unknown to it, by holding my peace when I felt strongly inclined to say something. But, assuming that the resolution before the committee is document No. 321, a new draft reported by the committee on Public Affairs, as seems to be the case, there is one feature of it to which the attention of the committee ought to be called before it is acted upon. If the gentlemen have this document No. 321 before them they will see that it begins with a declaration in these terms:

The conservation, development and use of agricultural, mineral, forest and water resources of the Commonwealth are matters of public interest. The General Court may therefore authorize the taking, by purchase or otherwise, of such lands or easements or interests therein.

In other words, it authorizes the Legislature to take, in the exercise of the power of eminent domain, every farm in the Commonwealth and every foot of agricultural land, for no declared reason whatever, because no declared reason is necessary, but only because in the view of the Legislature there is some reason for taking that particular land for the purposes of conservation of resources.

Perhaps I ought to say for the benefit of lay members of the Convention, although many of them may know as much law as I do, that the constitutional principle is that property can be taken by eminent domain only for a recognized public use. The effect of this resolution would make anything which in the eye of the Legislature appeared to be the conservation of natural resources a sufficient public use to warrant the taking, and the power, as I have said, extends to the taking of every farm in the Commonwealth. There may be reasons why we ought to do that. I have no doubt that a minute will be enough to enable the committee to dispose of a trivial question of this character, and so I will not make any motion to delay the resolution. But, as I said in rising, it ought not to be acted upon, as it appears to me, until

the attention of the committee has been called at least to this feature of it.

Mr. CLAPP: I wish to acknowledge my error. I see now I was mistaken. And now I should like to say a word in regard to No. 321. My objection, as I said when I was on my feet before, is that while I think that the resolution has some merit, it is too vague. So far as it relates to water-powers and forests I am in its favor. I have long believed that our Constitution and laws should be in such shape that it would be competent for the Legislature to regulate the cutting of trees in our forests, to the end that we might conserve our resources in the shape of timber, and in the shape of water rights, which are dependent in a great measure upon the due protection of the forests. But I agree with the delegate from Wellesley (Mr. Pillsbury) that this resolution is altogether too broad. I voted in the committee to strike out the phrase "agricultural resources." While I am willing that the substance of this resolution should be recommended to the Convention, I am opposed to the recommendation of it in its present form.

Mr. CLARK of Brockton: I rise to make this inquiry relative to Nos. 320 and 321. What I wish to know is if No. 321 is broad enough in its scope to include the provision in No. 320, last line, which provides that the Legislature may authorize the construction of homes for citizens.

Mr. CLAPP: Obviously not. I move as an amendment to this resolution that the word "agricultural" appearing in the first line be stricken out.

Mr. CLARK: I am somewhat interested in this subject-matter as involved in these two resolutions, and especially in that provision of the first resolution that relates to the providing of homes for citizens. I think it is a well recognized fact that the home is the unit, the most important unit, of our civilization, and that the home is the most important factor underlying our institutions and the best guarantee we have for the perpetuation of our democracy in America.

At the present time the tendency is for the people to concentrate to such an extent that there is congestion in our cities in the great centers of our community. And it is detrimental, in the opinion of social workers and all those interested in humanity, to the best interests, social and moral, of these communities and of this State at large. I am pleased to note, Mr. Chairman, that the development in our cities and in our larger towns of the policy of establishing school gardens is working beneficially and I believe it is destined to work an important change in our social, in our agricultural and in our domestic affairs. In the city of Brockton we have over 3,000 school gardens and the boys and girls who a few years ago were restless and uneasy during the summer months, the time of the long vacation, now find employment that is useful to them and to their families. It is beneficial to them in various ways. There is less mischief, there is less juvenile crime, there is a better standard of morals and of social culture among the young people already beginning to manifest itself. I look upon it as an important matter in connection with our public educational systems and I hope it will be extended and the tendency will be for these boys, when they grow to manhood, when they marry, when they have families, to desire to get out on the line of one of our street railways which are forming such a network all over this Commonwealth

and have a little piece of land, an eighth or a quarter of an acre or perchance an acre, and cultivate that land. In one corner of the rear there will be a little garden plot; in the other corner there will be a poultry house and yard. Around the house there will be a flower garden in which the wife and the children will be interested. At night when the father comes home, instead of immediately after he has taken his evening meal, his supper, finding his way into the heart of the city or the village and finding his way into some place that is objectionable because of its effect on the morals and the social nature of the man, he will go into the garden, he will go to his poultry house, he will develop those better qualities of fatherhood and those qualities that pertain to the highest type of a husband. It will inure to a better condition in our entire Commonwealth.

I hope, Mr. Chairman, because of these reasons and various others that I might enumerate, which have come to my mind as I have studied this matter in the last few years, that this resolution 320 will be passed and that it will authorize the Legislatures which will sit in this chamber in future years, if in their judgment and wisdom they shall deem it best, to pass legislation along the lines proposed there.

Mr. ADAMS of Quincy: May I be permitted to ask my friend the Attorney-General (Mr. Pillsbury) who has just spoken, a question? I am not certain that I apprehended his meaning, but I should like to ask him whether his objection to this resolution was because in his opinion this resolution takes away from the courts the power of declaring what is a public use and gives it to the Legislature, or whether it was not.

Mr. PILLSBURY: The question of my distinguished friend from Quincy was addressed in terms to the Attorney-General, and while there is a gentleman in the west wing who probably would object to hearing me so designated, I assume that my friend from Quincy meant to address the question to me. Am I right?

Mr. ADAMS: You are right.

Mr. PILLSBURY: That is not my principal objection. In my opinion, the terms of this resolution make the conservation of natural resources, or anything which the Legislature is disposed to regard as the conservation of natural resources, a new public use sufficient to authorize the exercise of the power of eminent domain to take any or all of these things described in the resolution. That appears to be its effect, and the question in my mind is whether, in this view, it ought to extend to all agricultural lands.

Mr. ADAMS: May I ask further whether that objection is one which goes to the basis of all these questions of the extension of taking for public use? That is to say, he defines, as I suppose correctly, the power of the Legislature at present to authorize any taking under eminent domain subject to the approval of the court. Now I want to ask him whether his objection goes to the root of the matter, — whether he objects to any interference with the power of the courts to limit the takings of the Legislature?

Mr. PILLSBURY: I will try to make my answer short and clear. That is not the ground of my objection, and the resolution may not present that question. My only criticism is that it appears to me, at a moment's notice and without time to seriously consider it, to go too far in putting into the hands of the Legislature the power to take

under color of the conservation of natural resources any and every man's farm, for of course it extends to that. And if the gentleman from Lexington (Mr. Clapp) had not moved to strike out the word "agricultural", I was intending to do so. In other respects it appears to me to have merit. I am inclined to favor it as extending the power of taking by eminent domain for the conservation of mineral, forest and water resources.

Mr. Butler of Brockton: As the only farmer on the committee on Public Affairs and the member who worked the hardest to have this word "agricultural" inserted in the measure, I want to explain to this body why I saw fit to have it inserted. It was not the purpose of that committee to take from anyone in the Commonwealth a farm that to-day is of any use to him. It was the purpose of that committee to give the Legislature the right to take land that to-day has no value in this Commonwealth and is of no use to our citizens. For example, I will say to you, the Hockamock swamp that lies between Brockton and Taunton, when that can be ditched so that the water can be drained from it there will be thousands of acres of land that will produce as good crops as any of the land in the Mississippi valley. There is land in Marshfield that to-day, if it were properly cared for, would show the same results, and you have the same kind of land on the North Shore, and that is the reason why the word "agricultural" was put in. It was not to take from any rich man his farm, it was not to convert any big estate for the use of the Commonwealth, but it was to take land that to-day is worth but very little and make it of great agricultural value. [Applause.]

Mr. Adams: I wish to thank the gentleman who spoke next before the last (Mr. Pillsbury) for his definition of what he thinks there is in this resolution, and I am extremely glad that the question has been brought before this Convention, because it seems to me one of the most important questions which can arise. We are living now in a period of great and rapid and violent change, and it is very essential that we should consider carefully whether it is desirable for us to permit this State to be hampered in those takings which the Legislature deem for the public safety because some property owner or other has a right to appeal to the judgment of the court. It is the old question which arises, has arisen from the beginning of this government and apparently is increasing in importance every day, whether the interests of an individual shall be allowed to stand in the way of your law-making, at the cost of public safety or of public welfare. It is, in other words, substituting the decision of a bench of gentlemen for the decision of the representatives of the people as to what is reasonable. Now, before the decision is taken by the Convention on that subject, — the definite decision, — I hope that this committee will pause and consider the momentous character of this question. Is or is not this country, in the crisis in which it now stands, willing to put into the hands of a bench of gentlemen the power of saying what is or is not a reasonable measure of public defence or a reasonable measure for promoting the public welfare? I do not think that it is a question which can be decided in a moment; it is a question which deserves the most careful consideration and the most thorough debate.

Mr. Clapp: A man who has been for some years engineer of the State Board of Agriculture, and who is now a delegate to this Conven-

tion (Mr. Wheeler of Concord) has just brought to my attention something which I think deserves consideration. He says, while he agrees with me that the term "agricultural resources" is too broad to appear in this amendment, yet there is a real need in this State to-day of some constitutional and legal authority whereby the private owners of flats or low lands may be obliged, compelled, to unite in a coöperative scheme for their development. I think, therefore, that it would be well at this stage to have this amendment, the whole proposition, laid upon the table. Let us do this, to the end that, as the delegate from Quincy (Mr. Adams) suggests, we may give the subject more thorough and careful consideration; and to the end especially that the suggestion which has come to me from the engineer of the State Board of Agriculture may be considered. I move you, therefore, that the whole resolution, with the pending amendment, be laid upon the table.

The Chair declared that the motion to lay on the table was not in order and, subsequently, Mr. Clapp moved that the Committee of the Whole recommend to the Convention that the report be recommitted to the committee on Public Affairs.

Mr. Charbonneau of Lowell moved that the resolution (No. 321) be amended by inserting after the word "taking", in line 6, the words ", by such public body as it may designate,".

Mr. Pillsbury: I have no objection whatever to the last motion of the gentleman from Lexington (Mr. Clapp) to report that the matter ought to be recommitted, but I venture to believe that there is a short and easy way of accomplishing what I now think the committee would be disposed to do in view of what has been said, and that is by inserting in line three, before the word "agricultural", — leaving that instead of striking it out, — the word "undeveloped", so that it will be confined to a power to take "undeveloped agricultural" resources, which I am now given to understand is what the committee have in view. For the purpose of taking the sense of the committee upon that question I will move that amendment. And in respect of the amendment proposed by the gentleman from Lowell (Mr. Charbonneau), Mr. Chairman, that is in the resolution anyway. The power of eminent domain may be exercised by any agency to which the Legislature sees fit to delegate it.

Mr. Brown: This seems to be Brockton day. I was waiting to hear a farmer get on this floor. I am against the motion to add the word "undeveloped." The chairman of the committee that reported the resolution is Delegate Anderson (of Brookline), who yesterday said that because he was in court on a matter of National interest he could not be here. A man who has held the positions which he has held, and who is recognized as he is recognized, would not report the resolution if there was any legal objection to it.

The United States at this very moment is saying that if a man belongs to the agricultural army he need not join the fighting army, because we need food to feed the fighting army. It has urged the farmers to raise crops and to take the chance that possibly they may be recompensed. Yet to-day, take it through the State of Maine or Massachusetts, you find the farmers are not breaking even. They are preyed upon by all of the trusts. We are in perilous times. How long before you in Massachusetts will draft men and take farms for the purpose of raising food that must be had if the Nation is going to live?

Is the Almighty making a Napoleon out of a Kerensky in Russia who may take the revolution and guide liberty in its proper channels? Or will liberty overflow its banks and carry destruction before it? One knows not.

God moves in a mysterious way,
His wonders to perform.

We do not know how the new dispensation is coming, when men are to be made wholly free. In this Commonwealth the old natural order has been reversed. It was agriculture first, manufactures next and commerce last; now it is commerce first, and manufactures next, and agriculture last. Everything is weighed in the scale of dollars. You weighed your sectarian amendment in the scale of dollars. You told how many dollars you had given to educate young men; but you did not tell what you made by educating young men. The greatest work that Massachusetts or any other State can accomplish is the raising of good men and women. Look to it when the draft comes, and see the results of the past one or two generations. Look to it when you see every other man rejected because he has not got the physique to serve in the army. Look to it when you see that the people's feet are no longer on the ground they own, where they ought to be, defending their soil; but rather that they have got nothing but a personal right to work.

Do not put that word "undeveloped" in. Why do you continually limit the Legislature? What is the matter with the Legislature? It is as good as the people. You never can give out any laws better than the people are able to receive, and you cannot long give out laws that are worse than they want. Why should you put in the word "undeveloped?" Leave the resolution as it is. What great natural resource is more worthy of being developed to-day than the resources of agriculture? If the farm cannot be made attractive, if it cannot raise the yeomen on the soil, if every one is to be a distributor, if the farmer, the worker, is to carry the unneeded distributor on his back, as he is carrying him on his back now, where are we going to land? Let agricultural land be taken if it is necessary. Help the farmer, if he can be helped. You have gone so far as to recognize the fact that you must give him a minimum price. I want my position understood. I asked for a broad declaration of no private title in agricultural resources. It came before the committee. I advocated it before the committee. The committee in its wisdom made its report. It gives to the Commonwealth the right at any time to take the property. With that I am satisfied. I fail to see why, when a committee has been supported unanimously in one case, you should now oppose a unanimous committee report in this case. I ask that this amendment "undeveloped" be voted down, that there be no recommitment, that the committee's report be accepted.

Mr. Montague of Boston moved that the resolution be amended by inserting after the word "agricultural", in line 3, the words "land and of", so as to read: "The conservation, development and use of agricultural land and of mineral, forest and water resources".

Mr. Montague: The amendment that I suggest presupposes the addition of the amendment "undeveloped", which already has been submitted, so that if my amendment and that word "undeveloped"

should be adopted it would read in this way: "The conservation of undeveloped agricultural land and of mineral, water and forest." My idea is this: It seems to me that the word "undeveloped" alone applies not only to land but to forests, water rights and minerals. We do not need to worry much about the minerals, but it seems to me that it might fairly be said with the word "undeveloped" alone that the State could not take any interest in water rights which are wholly or partially developed, but that it would have to take wholly undeveloped water rights, and those are very scarce in this Commonwealth.

Mr. Chairman, the feature that appeals to me mostly is the one mentioned by the gentleman in the fourth division, whose name I do not know (Mr. Butler), and that is with reference to the flats, hundreds of thousands of acres of which lie along our coast, and which now are practically undeveloped. It seems to me the day is coming when here in Massachusetts we have got to do the same as they do in Holland, which I have seen, where every one of those flats such as we have to-day up and down our coast is all diked out and pumped out and is producing tremendous crops. We can do it all along our coast. When I was in the Legislature people who owned some flats, — I forget just where, but it was down the North Shore, — came up here and desired to do that very thing privately; but they could not do it, because one man, who owned about six acres right in the middle of the tract, sat back and would not do a thing. He would neither fish nor cut bait. They could not do a single thing in developing those flats because that man would not do anything or allow others to do anything even at their own expense. It seems to me that, considering the way that prices of foods are going up, within 25 years we have got to utilize every foot of available land in this Commonwealth in which there is any fertility, and there is fertility in all these flats, all that I know anything about. After they have been diked out and two or three years have gone by, so that they have got dry, they will be the most fertile lands in this Commonwealth.

I believe there is something in the forest line, and also in the water rights, and I would not like it restricted to the purely undeveloped forests or water rights, because who can say what water rights or what forests are wholly undeveloped? They are all developed to some extent. And so I would say "undeveloped agricultural lands," and then leave the minerals and the water and the forests just as they are in the bill, developed or undeveloped. If they need improvement, improve them.

Mr. BAUER of Lynn: I earnestly hope that none of the amendments to this resolution will be considered by this Convention. I believe that the word "undeveloped" was purposely put in there in an unfriendly spirit to the resolution. It means a great deal to this Commonwealth whether or not in the future we shall have the right to own and operate the natural resources of this State, and there should be no restriction and there should be no protection to vested rights that now may be in existence when it conflicts with the rights that are fundamental, those of the people of this Commonwealth. There is no doubt about the natural resources of the Commonwealth, when they concern all the people, being of such vital interest to them that there should be a constitutional provision and it is fundamentally a constitutional

matter. I believe, Mr. Chairman, that to put in the word "undeveloped" would strangle for all time the development of the Merrimack valley, for example, a development for which cities and towns in the northern part of this Commonwealth have been earnestly striving for years, and some day it will be granted them. There are on that river certain water-powers that were given away, certain water-powers that belong to the people of this Commonwealth to-day in spite of the fact that the Legislature has given them away, and it may be in the future that the people of this Commonwealth will want to take over those rights for the benefit of the people of a large portion of this State, and the Constitution to my mind should permit such an act on the part of the Commonwealth. It should not be restricted by the word "undeveloped." That word "undeveloped", placed where it is, covers everything in that resolution, mineral resources and everything else, and the legal mind that inserted it there knows very well the importance of it and knows very well that it is an unfriendly act to this resolution. I hope, Mr. Chairman, that this Convention will be broad enough, will have vision enough to see that the natural resources of this State should be conserved for the people of the Commonwealth in the Constitution as this resolution permits, without any unfriendly amendments.

Mr. O'Connell of Boston: I hope, Mr. Chairman, that the motion of the gentleman from Lexington (Mr. Clapp) will prevail, and that this subject will be referred back to the committee for further deliberation on their part. It is certainly one of the important subjects that will come before this Convention, and I trust this Committee of the Whole to-day will send it back to the committee on Public Affairs for the purpose of getting more light upon it.

In line with that purpose, I want to submit as an amendment, the following: To strike out, in lines 3 and 4, the words "agricultural, mineral, forest and water", and insert in place thereof the words "all the natural", so that it may read as follows: "The conservation, development and use of all the natural resources of the Commonwealth are matters of public interest."

I think that covers it in a broad way, possibly too broadly; nevertheless I think it brings it before us concretely in the form that we ought to discuss it. If any exceptions are to be introduced to it they may be brought in from that proposition. I shall reserve the right to discuss that feature of it later, but I do trust that this will go back to the committee for the purpose of having it brought out in such a shape that the suspicions of the suggested change by the gentleman from Wellesley (Mr. Pillsbury) expressed by the delegate from Lynn (Mr. Bauer) may not be possible.

Mr. Hobbs: I am not at all hostile to the idea of sending this back to the committee if the Convention feels that there is really any great difficulty disclosed by the several amendments that have been made. To take the last one first, striking out the words "agricultural, mineral, forest and water", and substituting simply the words "all the natural", the only other natural resources that I can readily think of are the fisheries and game, and the protection of those is already a fundamental part of our public policy. I really do not think that the amendment will add a great deal. I should like to be convinced if it would, because I would not willingly reject any worthy idea, but at

present it does not seem to me that the proposal would add a great deal to this amendment.

As to the amendment of the gentleman from Wellesley (Mr. Pillsbury), I assure him that I am not one of those who think that they know more law than he does, because I know that I do not; but I must admit that I could not approve of his amendment, because in the place that it is it must necessarily apply to and limit all the succeeding words. I think that the result of that has been pretty adequately covered by the gentleman from Boston (Mr. Montague) and the gentleman from Lynn (Mr. Bauer). If it goes in with the amendment offered by the gentleman from Boston of course it would affect only agricultural resources, and the question then would naturally arise whether undeveloped agricultural resources means merely land in a state of nature or is broad enough to include land with a certain moderate amount of cultivation. Suppose, for instance, a gentleman owns a large tract of land suitable for agriculture and fixes it up for a game preserve; that in a way would be developed, since it is developed for a certain use. Then the question would arise whether it would come within this amendment if it were desired to take it for some agricultural purpose.

As to the necessity of the whole article of amendment, I think perhaps enough has been said. The State Board of Agriculture, as I understand, claim that such an amendment might be necessary in order to provide for proper development of low lying lands. That is a thing that would add a great deal to the wealth of this Commonwealth, both in respect to taxable wealth and production, and it is a thing that the Legislature might well want to do. For that reason I should oppose the striking out of the word "agricultural" entirely, as the gentleman from Lexington (Mr. Clapp) desires to do, and I should, I think, oppose the limiting word. There is no real danger, I think, in entrusting this power to the State. The Legislature never has shown any great inclination to run wild in the matter of taking land by eminent domain. It has been complained of, if anything, for being a little conservative in its undertakings. So far as the power has been given to it I think it has been used well and wisely, and I see no reason why it should not be used well and wisely in the future. There is no danger, I think, of the State going into the business of agriculture on a broad scale, except under the spur of urgent necessity. The great difficulty with the farming situation is not the making land available, but finding men to work it, and I do not think that we shall go very far in the solution of that problem by refining the language of the amendments authorizing the taking.

As to the amendment offered by the gentleman from Lowell (Mr. Charbonneau) which limits the authorization of taking to public bodies alone, I should question if that was advisable. I think that the power may be safely entrusted to the Legislature in the first place, and in the second place I think that the power of eminent domain might be given under proper restrictions to coöperative undertakings such as the State Board of Agriculture evidently has in mind. That would be manifestly impossible if the limiting words suggested by the gentleman from Lowell were adopted. If the Committee of the Whole is convinced that the committee has not considered the matter sufficiently, I think that we might properly report to the

Convention that it be referred back to the committee; but if the Committee of the Whole is convinced that it is entirely safe, as I think it is, to leave the words as they stand, then there would seem to be no reason for sending it back. It is a matter for the Convention to judge of in the last analysis, and I leave it in their hands with great confidence.

Mr. DRESSER of Worcester: I hope that this resolution will not be adopted, certainly in its present form, or else will be much more carefully written. The first sentence of the resolution, declaring these matters to be of public interest, is no news. They always have been of public interest in the Commonwealth. Many statutes on our statute-books are now based on the fact that agriculture and forestry and water are matters of public interest. That sentence adds nothing. Almost the earliest acts which were passed by the Colony had to do with the development of water resources. My own county of Worcester has been built up entirely by the development of its streams and its reservoirs under the Mill Acts, which were passed on the theory that waters were of public interest, and that the conflicting rights of various owners along the stream were matters of legislative regulation and judicial adjustment. On the faith of that legislation every mill in this Commonwealth, every reservoir, has been erected. Rights have been acquired under those Mill Acts and under that declaration, and this approved policy of the State has made the State a prosperous manufacturing community. If this committee and this Convention should go further and grant to the Legislature this power of condemnation, every mill title and every water title will be shaken. The power of condemnation that is given in this resolution is not controlled, as the power of condemnation in the Constitution now is, by the judicial interpretation of "public use." I think the gentleman from Wellesley (Mr. Pillsbury) expresses the law as I understand it, or certainly as I understand it as drawn in this resolution, that if the Legislature should determine to add to a means of what it called conservation or adjustment of rights between all the mill owners on a stream, or to regulate the use of water at one mill or to condemn it, that that might be a taking of property from one mill owner for the benefit of another mill owner and be a taking for a private use in fact, and because the Legislature had so determined it, the taking would not be subject to review by the courts. It is, it seems to me, a matter that we ought to look at pretty sharply, and in order that the matter may be brought sharply to our attention I have proposed the following amendment:

In line 4, strike out the words "and water"; in line 8, strike out the words "water and", and again in line 4, insert after word "mineral", the word "and", so as to read:

The conservation, development and use of agricultural, mineral and forest resources of the Commonwealth are matters of public interest. The General Court may therefore authorize the taking, by purchase or otherwise, of such lands or easements or interests therein, including mineral rights, and may enact such legislation as may be necessary or expedient for securing and promoting the proper conservation, development and use thereof.

It seems to me, sir, that there is a distinction to be drawn between the agricultural question which has been debated here and the water questions which I am now raising, and perhaps the others. That distinction, it seems to me, ought to be considered more fully than I at

least have been able to consider it, and therefore I hope, if it is possible, that this resolution with the amendments may be recommitted for further inquiry.

The resolution, with the pending amendments, was recommitted to the committee on Public Affairs Wednesday, July 25, 1917.

The committee reported the following new draft (No. 344), August 8, 1917:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The conservation, development and use of agricultural, mineral, forest and water resources of the Commonwealth are public uses for which the Legislature may take or authorize to be taken, by purchase or otherwise, lands or easements or interests therein, including water and mineral rights, and may enact legislation necessary or expedient for securing and promoting the proper conservation, development, use and control thereof.

This was the first of the proposed amendments to be debated in the 1918 session of the Convention, after a motion to postpone its consideration had been defeated. Debate was begun Thursday, June 13.

Mr. CLAPP of Lexington: This resolution, gentlemen, is of a very broad and almost revolutionary nature. If passed, it introduces in Massachusetts a new rule of property with respect to agricultural lands, water resources and numerous other things mentioned in the resolution. Heretofore a man who has owned his farm in the Commonwealth of Massachusetts has had a complete title to it; and so long as he owned it, he could cultivate it and make such use of it as he saw fit. I do not believe you realize what is the meaning of this declaration as it stands in the resolution. It starts off by saying in substance that the taking or the regulating the use of the property of the enumerated classes is a public use. Now, when you declare a public use with regard to a certain kind of property, or say that that property is affected by a public interest, you do something which is followed by many and important legal consequences. One of those consequences is that that property, and the use of it, becomes subject to regulation by the Legislature or by some board created by it. It follows, therefore, that under that law, — under that amendment to the Constitution, if adopted, — the Legislature, if it saw fit, could pass laws regulating the way in which the farmer should use his land, prescribing, if you please, the crops which he should raise and the order in which he should raise them. The Legislature might say that this year he should devote his land to the cultivation of beets or carrots, and the next year to the growing of onions, and so on. I do not believe, in the first place, that there is any need or exigency requiring a Constitutional amendment of that scope. In the second place, I do not believe that the farmers in this State desire to have their holdings of farm lands and their homesteads put into the possible control of the Legislature in that way.

Now, gentlemen, as I have been able to understand the situation after giving this subject some study for the last year, there are two possible things for which this Constitutional Convention might well provide. One of them relates to agricultural lands; the other one relates to water-power.

First take the question of land. It has been said here time and time again, and it is perfectly true, that there are large areas of low, waste and undeveloped land in Massachusetts which might well be brought under cultivation and made to increase the food supply of the State, but in the present condition of the Constitution and its laws there is scarcely anything that can be done. We have had for a hundred years and more upon the statute-books a law under which the several owners of land in common may go to the court, with the consent of a majority in interest, and have a commission appointed for the purpose of draining and improving in other limited respects those lands so held in common. I will not discuss the details of the statute, but the effect of it is such that nothing can be done unless, in the first place, you get a majority in interest as regards the area or value of the land to join in the petition to the courts, and that sometimes is a hard thing to do. At all events, I am sure that the secretary of the State Department of Agriculture would tell you that that substantially is correct, and that in the experience of the board they find that they cannot force the improvement of these low and swampy lands. Now, I agree that the Constitution may well be amended in such a way that the Legislature may compel the development of such broad tracts of waste land as, for example, the Sudbury meadows or other waste lands that readily come to the recollection of any one of us. I think there is only one way by which that thing can be forced, and that would be by authorizing the Legislature to provide by any appropriate means, such as the creation of a corporation, for the taking, — the taking by right of eminent domain, — of those areas of land upon payment to the owners of just compensation, and then having the body or the corporation which takes them given authority to proceed with their development and improvement. That is a rough, offhand statement of what the need is as regards the development of agricultural land.

I think there is a single need, and so far as I have been able to see it, only a single need, with regard to the water-powers of the State. I was much impressed by a statement made by the delegate from Beverly (Mr. Loring) in some connection last summer, when he said that as a fact the water-powers in Massachusetts, on the whole, had been developed efficiently in the public interest by public-spirited men, and that there was little, if any, criticism that could be passed upon the way in which those developments had been made under the present Constitution. But, gentlemen, with the increasing field that comes for the use of electricity for power, and perhaps for heating purposes, there is a need, — or may be a need, — of something which perhaps cannot be had under the existing limitations of our Constitution. Let me explain what that is. You have upon a stream, the Connecticut, perhaps, or the Miller's River, for example, a series of dams already built, with the incident water-powers pretty fully developed, and you would say offhand that there is not anything further that can be done upon those streams; but you find as a rule in those cases that there is a vast amount of water in the spring of the year, flood time, coming down that stream, going over those dams and running to waste, doing nobody any good. Now there is an opportunity in a case of that kind, by the construction of a pond or storage reservoirs up the stream, to gather up and save that large volume of water which now

goes to waste in the spring and, by regulating the withdrawal of it, cause a vastly increased amount of power to be produced on that stream, especially during the warm portion of the year. But in order to do that it becomes necessary to construct storage dams and reservoirs up the stream. Who is going to pay for it? Obviously, that improvement should be paid for by all of the several owners of the water-powers who participate in the benefit of it; but it usually happens that the fellows down the stream play the part of a dog in the manger. They know that if somebody above them goes ahead and makes the development they will get the benefit of it. It costs money to make these large developments, especially on the scale needed in these times, and it looks to be a reasonable proposition that if some men of enterprise, having in mind not only their own interests but those of the public as well, get together and are willing to raise the money to build these upper reservoirs which will so much conserve the water-power, they should be encouraged to do that by laws which would enable them to make those who share in the benefit with them pay their proportionate part of the cost. I do not know just how to get at that. Perhaps I am not called upon at the present stage to tell how to do it, but I think something like this would be all sufficient for that particular purpose, namely: Provide that —

> For developing, extending or conserving the water-powers of this State in the public interest the Legislature may authorize the construction and regulate the use of dams, storage reservoirs and other like improvements, due compensation to be paid for private property taken therefor, and may provide for the assessment of a just proportion of the cost of such improvement upon water-powers benefited thereby.

I throw that out merely as a suggestion in passing.

Now come back for a moment to the agricultural end of the proposition. I worked out last year something which seemed to me to cover the matter adequately, namely (see No. 346):

> *Resolved*, That it is expedient to amend the Constitution by the subjoined
>
> ARTICLE OF AMENDMENT.
>
> The conservation, development and use for agricultural purposes, of low, swampy, waste or otherwise undeveloped land are public uses for which the Legislature may take, or authorize to be taken, by purchase or otherwise, lands or easements and interests therein.

To that extent I am willing to stand for a modification of the rule of property as it exists in Massachusetts to-day, and I think that is as far as we should go at the present time.

Finally, Mr. President and members, you can see readily from what I have said regarding the very broad scope of this main resolution now before us, that there must exist differences of opinion as to what you should do with the resolution and the different parts of it. I think that it will simplify the situation and make it easier to deal with the subject if we divide the resolution into parts, and I want to conclude the desultory remarks which I am making now by moving in substance that the resolution be divided, to the end that the agricultural portion of it be treated separately; and if that motion prevails, as I hope and believe it will, then I shall move the adoption of this agricultural resolution which I have just read. Then, having disposed of the agricultural portion of it, the Convention will be free to come back and deal with the other part of it. Now that is my program; I want

you to help me carry it out. I move that the resolution now under discussion, if this motion is in order, be divided so that the part relating to agriculture shall be treated first and separately.

The PRESIDENT: The Chair is of the opinion that the resolution is framed in such form that it cannot be divided. The member can offer amendments if he desires.

Mr. CLAPP: Very well. Then I move as an amendment the adoption of document No. 346.

Mr. BAUER of Lynn: I have listened with a great deal of amazement to the argument advanced by the member from Lexington as to why he wanted a change made in this amendment and his document substituted for the one now before the Convention. I cannot conceive of an intelligent man in these times failing to see that there should be no restriction placed on the obtaining possession of our natural resources on the part of the people of this Commonwealth when they are desired for community interests, upon the payment of proper return to those who may own them. He mentions marsh land as being the only agricultural land that should be returned to the State by eminent domain. I wish to call to the gentleman's attention the many very large tracts of land in the western part of this State, in the Berkshire district, some of them to the extent of twenty thousand acres, that have been bought up by wealthy people, not residents of this State, for game preserves and other purposes. They have bought up hundreds of smaller farms that were engaged in the occupation of producing foodstuffs for our people, and they have wiped out those farms that they might have these large estates in the Berkshires and invite their friends to them; and the non-productiveness of those tracts has been paid for by all the people of the State. The time is coming, Mr. President, when every available acre of our agricultural land that can raise food-stuffs will have to be taken by the people for that purpose, and no man shall conserve any large tract of land so that it may be easy for him to shoot game birds or to fish in its streams without molestation or interference. The principle that he is trying to combat is a principle so broad and so important to the people of this Commonwealth that a restriction of it should not be considered for a minute in the light of his resolution as an amendment.

He states further that our water-powers have been developed by public-spirited men. Public spirited, indeed! They are all of them, every one who has developed a water-power in this State, dollar patriots; and he knows it. The Connecticut River has been harnessed; navigation has been stopped. The coal for all the people in that great valley has been paid for at an advance of two to five dollars a ton, — because of what? Because of certain private interests who have taken away from the people the right to that river and have harnessed it up for the production of power that they may make an enormous profit from it.

The Merrimac Valley has been throttled for fifty years, has been held back for all these years, because the Essex Company has grabbed that water-power there without the return to the State of a single dollar, under a most unusual charter, the only one ever granted by this Commonwealth. What has that resulted in? It has resulted in the increased price of coal and commodities to many hundreds of thousands of people in those communities west and north of Haverhill. They have

been paying that advanced price for fifty years in order that a few stockholders may make an enormous profit out of what is a natural resource and which should belong to the people of this Commonwealth. This ownership should not be denied to them, nor should any of its advantages. I believe the time is coming after this war, when our men come back from the firing line, when all class and social and financial distinctions will be reorganized on an entirely different basis from anything we ever have known, and we should have our fundamental law so liberal and so broad that they in their wisdom in the years to come can take advantage for the people of this Commonwealth of every natural resource in the Commonwealth that really belongs to them. And I hope the men in this Convention will be far-sighted enough to see the restricting and narrowing nature of the proposed substitute resolution that the gentleman wants adopted, and I hope they will oppose it.

Mr. BUTLER of Brockton: While I think that the farming interests of the Commonwealth of Massachusetts will be protected with either one of these measures, I think document No. 344 would be the better one, but I think that the farming interests will be content if you will pass the amendment of the gentleman from Lexington (Mr. Clapp), and when it comes to its next reading we will be prepared to show to you what advantage it will be for the Commonwealth.

Mr. BROWN of Brockton: The question is on substitution. To substitute the resolution of the gentleman from Lexington (Mr. Clapp) is to narrow the whole subject to conservation of waste lands. If you vote for substitution and the motion prevails, then we talk about nothing but waste lands. If the substitute is rejected, the question then is broadly on conservation of natural resources. In its broad form no question of more importance is before this Convention. It occupied much time during our previous session. If I had been arguing for delay to-day I should have urged that Mr. Anderson (of Brookline), the chairman of the committee, ought to be heard.

I want the attention of the attorneys. I want to ask them this question: To whom did the natural resources of this Commonwealth originally belong? Did they belong to all the people or to a part of the people? Is it true fundamentally that a man is born free and has no right to sell himself into slavery? Do you believe that? Well, if you believe that, then how can you in any way indorse legislation that has put into the hands of a few the natural resources by which they might enslave the many? Slavery does not consist merely in wearing chains. Any man who is in debt is in slavery. If he has bound himself to pay this debt, that bond is voluntary. But society has no moral right to authorize a few men to put you in debt; and society, either knowing it, or not knowing it, unquestionably has given some men that right by giving them the control of natural resources. How the evil shall be remedied is the great question to solve.

This legislation that has placed natural resources in the hands of private parties was passed when the people were not looking. On what plea did they get their titles from the Legislatures? It was on the plea of public convenience and necessity. That is the phraseology, — public necessity and convenience require that certain people should be made a corporation, — for what? Why, for the public convenience and necessity and not for private profit. On this plea they are

handling our natural resources to-day. Therefore if the people feel that they can do better to take over these resources instead of allowing them to remain in private hands, why they should have the opportunity, and then reward the private owners as they should be rewarded. I claim that there is no natural resource of this country that can be held morally as private property except it is held as a trust to be administered for the common welfare, the holders of the title to be remunerated for any efforts they have made in developing the resource; but otherwise it is for the interest of all the people. Had that been in the grant we should not be in the confusion that we are to-day in regard to these natural resources.

This resolution declares that certain resources may be conserved. Why does my friend from Lexington object to agricultural land being taken by the great people for their necessities? Is the land greater than the man who walks on it? If we may take the farmer from the land for the army, may we not take also the land to support the army into which he has gone? Who knows how long it may be before this whole Commonwealth must be reorganized on a fighting basis? Already our Constitution principles are swept aside. Necessities do not know principles; therefore our principles, National as well as State, are set aside temporarily because a great danger threatens the foundation, and if the foundation is undermined the whole structure will fall. Shall we provide that the people may say that natural resources, whatever they are, may be conserved by the people for their own use, or shall we lock the door and say: "No, whatever title a private owner has got to-day he may hold?" What would be the future of some of your Massachusetts cities if they owned the water-power on their borders? They could develop it and give the cheapest facilities for manufacturing that could be offered anywhere in the country. When you have cheap facilities you invite capital, you invite settlement, you make possible the development of the largest possible city in the Commonwealth. But many of them to-day find themselves throttled because some private individual was the first to see how the water-power might be developed. Do not narrow this subject down by the substitute of the gentleman from Lexington. There ought to be no debate on waste land. Of course everybody here would be willing to have waste and swampy lands reclaimed. Of course you would. We ought not to waste a great deal of time in rejecting the substitute. But this great measure that is before you is not harmless to some individuals. I would not be unfair to corporations, but they have no vested rights. Some think they have and there is the possibility of trouble. It was the claim of vested rights by the slaveholders that made trouble in this country, and if a claim of vested rights is raised again it will raise trouble again. Cannot we harmonize and bring these titles of ownership of our natural resources into accord with our institutions? You bring them into harmony when you permit public ownership if they do not properly fulfil their functions in the public interest.

I hope, sir, that the motion to substitute will not prevail; that the original resolution when it comes to pass will not be amended. In the former session we made suggestions and the committee modified and kept modifying their original draft and they have made a resolution that should be acceptable to the Convention.

Mr. CLAPP: I am not seeking, gentlemen, to make my draft which relates to agriculture cover the whole field of the resolution. Perhaps it would, in the form in which my motion now stands. I do not want to cut off your opportunity to treat in some proper and fair way the question of conserving the water resources, and therefore, Mr. President, perhaps it will be proper for me to ask the leave of the Convention to change the form of my motion, which now is that document No. 346 be substituted for the entire resolution, and make this motion: I move to amend the main resolution by striking out the word "agricultural", in the third line, and by adding as a separate paragraph document No. 346. Then if you adopt that amendment you will practically have your agriculture and your water business upon a separate basis, as I think they should be, and the resolution will be in form where, if you please, you may amend the paragraph of it which deals with water resources. I hope I may have the privilege of making that change in my motion.

The PRESIDENT: The Chair understands the member to move to strike out the word "agricultural", and to add at the end of the proposed amendment another paragraph reading as follows:

The conservation, development and use for agricultural purposes, of low, swampy, waste or otherwise undeveloped lands are public uses for which the Legislature may take, or authorize to be taken, by purchase or otherwise, lands or easements and interests therein.

Mr. HOBBS of Worcester: Owing to the absence, on affairs of the Nation, of the member of the Convention who is in charge of this matter (Mr. Anderson of Brookline), it devolves upon some other member of the committee to say a word or two as to the intentions of the committee in framing this resolution. The gentleman from Lexington has described this resolution as revolutionary. Of course, in times like this a mere word like "revolutionary" means very little, because we have matters upon us so much more important and far-reaching than a revolution that a touch of the red banner does not scare us as much as it used to. We live at present in times when a man's right to his life, liberty and also to his property is being subjected to great and important modifications. Nowadays we cannot regard anybody's right to his own property in so absolute a manner as sometimes has been the case. In these days, when every man's effort is needed in order to produce the food and the bare requirements for existence that the people of the Commonwealth require, no one ought to urge the sacred right of a person to develop and use his land as he pleases. If he is not using his land, if he is permitting to lie waste his land that is capable of producing crops in this time when every inch of land that can be cultivated ought to be bearing its crop, is the Convention prepared to say that his right of property and his right to let that land lie idle is a right that the community at large ought to respect? I do not think that it is. As a matter of fact, the community ought to have a right to protect itself in such emergencies, and if anybody sees fit to assert a right to let lie idle property of such a nature that it otherwise might feed the community, it is a proper part of the State's functions to see that that land does produce; and a right of property to let it lie idle is not a right that the State is bound to respect. If that is revolutionary, let anybody who wants to make the most of it. I do not think it is. I think it is a fair statement of the right of the

community to protect itself, a right that is superior to all personal or property rights.

That bears upon one side of what the gentleman from Lexington said, that is, as to whether we ought to set up a right in the Legislature to step in and say what sort of crops land should be made to bear and what sort of use one should put his land to. Ordinarily, of course, that is not a function which the State would or could properly exercise. The Legislature, singular as it may seem, is not omniscient and ordinarily cannot exercise as efficient control over private land as the owner himself. In ordinary times the familiar doctrine of supply and demand is entirely sufficient to take care of making the land produce that which the community really wants. It is in extraordinary times like the present that a power of this sort would be useful, when the laws of supply and demand in a way are shelved by the more important laws of necessity.

The gentleman from Lexington has mapped out pretty well two propositions, — that this resolution covers at least two principles which are of considerable merit. One of them is the development of low-lying, swampy lands, and incidentally the irrigation of dry lands. The other is as to the conservation and the development of water-power. He admits, I think, the importance of those two things.

The question has been put with regard to water-power as to whether this is not now a public use, and if so, what is the need of a Constitutional amendment? The answer to that is very simple. If it were a public use there would be no need of this amendment. There is a question as to whether it does come under the definition of public use as adopted heretofore by the courts. If I recall aright, in the earliest Mill Acts, an attempt was made to justify them on the ground that the public interest was promoted by the development of water-power and the building up of the industrial life of the community. That notion, however, was discarded and an attempt made to justify the Mill Acts on the ground that they were an exercise of the police power, so called, discarding the idea that it was a proper exercise of eminent domain to take private property for the purpose of developing water-power. I think that was carried to the Supreme Court of the United States and received acceptance there.

Mr. Brown of Brockton: If you please, I should like to know on what ground the Mill Acts were sustained finally, — on the ground of the police power or the public interest?

Mr. Hobbs: I believe, — I am not competent at the present moment to discuss the decisions in detail, but I believe, — that the accepted theory at one time was that it was on the ground that the Mill Acts were an exercise of the police power, although I believe one late decision went to the extent of saying that while the Mill Acts were difficult to justify in theory, in practice they had been carried on so long that they had become a part of the law of the Commonwealth.

The development of water-power is becoming a much more important one at this time on account of the development of hydro-electric power as an important source both of power and of light for our communities. Water-powers which were of rather minor consideration heretofore have become, in view of modern inventions and discoveries, of considerable real advantage. Even our municipalities have taken into serious consideration the question of developing the

overflow from their reservoirs which heretofore has been allowed to run to waste. In this very year we passed legislation to authorize the city of Springfield to develop the overflow from its water system and to use the current thus developed. The metropolitan water system for some time has developed and sold the water-power from the overflow from its reservoirs, and all up and down our streams where developments have been made there is opportunity to effect a saving in this way. Our streams, of course, have been developed as water-powers from very early times. A large part of the law regarding water rights has been worked out in the Commonwealth of Massachusetts, because in this Commonwealth water rights very early became of importance. Owing to the lack of coal and the ease with which these water-powers could be turned to account, water-powers became of importance somewhat earlier, perhaps, than they did elsewhere, and all of our water-powers to a large extent are developed. There is an opportunity for large future development. The Commission on Waterways and Public Lands, in a very elaborate report to the Legislature, listed the streams of the Commonwealth and the undeveloped water-power upon them. I cannot recall the figures. If this matter goes to a further stage I shall hope to have some of them. It is sufficient to say that they regard the possibility of a large increase in the water-power of the Commonwealth by the establishment of some sort of legislative authority to develop and promote those water-powers as a matter of distinct possibility, running into the tens of thousands of horse-power, — I am told that it is about two hundred thousand horse-power, — undeveloped in the streams of the Commonwealth. Therefore there is an important actual resource of the State involved in this proposition relating to conservation.

The constitutional amendment will not do it all, of course. But we were considering, at the last session of the Legislature, a measure advocated by the Commission on Waterways and Public Lands; and the cry of all of the attorneys who attended in opposition, and I think a very well justified cry, — there are some of the attorneys sitting in this chamber, so I am sure that what I say must be said carefully, — the cry of all of them was that the legislation undoubtedly was unconstitutional, and on looking it over I was inclined to think they were right. In the first place, there was a question as to the power of the Legislature to impose a betterment tax for the purpose of meeting the cost of the improvements and assessing it on those who benefited by it. In the second place, of course, there was the question as to whether the purpose of developing water-power is a public use. One of the attorneys for one of the water-powers concerned, — and in this he met with no enthusiasm from his brothers at the bar who were there in attendance, — stated that in his opinion the most efficacious way of enabling proper legislation to be drafted was the adoption of an amendment to the Constitution declaring the development and conservation of water-power to be a public use, and I think that he is right. The matter trenches so closely upon private use that it is questionable if the courts would regard a proposition for the use of the power of eminent domain for the conservation and development of water-power other than for strictly public uses as a public use. Of course if the water was to be used for drinking purposes, that would be a public use. If it was to be used purely for public lighting pur-

poses, that also would be undoubtedly a public use. But where the conservation is for the purpose of developing power for a multitude of uses, — for manufacturing, for milling, for any one of the various purposes for which water-power can be used, — then it becomes a question as to whether that development is for a public use or for a private use, and it is for those purposes that the Constitutional amendment which the committee have drafted would be of importance. It seems to me that it is a desirable thing to broaden out the Constitution to such an extent that in this day particularly, when we are hard put to it to get sufficient fuel to keep our factories running, when we are hard put to it to get enough coal to keep our lighting plants running, that the Commonwealth be given ample power to develop its water-powers to the fullest extent. Of course the larger aspects of conservation cannot come through the State; the largest water-powers undeveloped that run through the State must be conserved, if at all, outside of the bounds of this Commonwealth.

Continuing after the recess Mr. Hobbs said:

I regret very much that owing to proximity to the closing hour I was compelled to divide my speech. I am not going to repeat at any length what I said this morning, except to summarize it briefly thus: That the reason for this amendment, the reason for declaring that the conservation, development and use of certain natural resources are public uses, is a reason that develops from the necessity of events; that in our economic progress we have reached a condition whereby the conservation, development and use to the fullest extent of all our natural resources is one involving the highest good of the community; and therefore in the light of self-preservation the community ought to consider them public uses, and to devote its collective functions, its powers of government, toward the conservation, development and use of them.

The gentleman from Lexington (Mr. Clapp) has offered a substitute resolution which differs from the one before us in scope. I think that he admits, if I understand him rightly, that in certain respects these may be considered of such public importance that further powers should be given to the Legislature to accomplish them. The difference between us is therefore one of degree.

I think the difference rests on a somewhat fundamental concept of property rights. There is a disposition, — there long has been a disposition, — in constitutional thought in this country to look upon property rights as rights which are above the Constitution, and as rights which are natural in their nature, which have a certain sanctity about them, and which even Constitutions cannot assail successfully, which the State has no right in fact to deal with. The more modern conception of property rights is, I think, that they are rights which are recognized by the State as an essential of community existence. That is, we recognize rights of life, liberty and property, because without them we cannot very well have a State.

It is not possible, as humanity is constituted, for us to put our property into a common fund and expect a satisfactory result to emerge therefrom. We act together for certain purposes. We deduct certain portions of our property in the form of taxes, put them into a common treasury, and devote them to a common purpose.

But in the main we cannot deal with our property that way, for the reason that what is everybody's property is nobody's property, and that the same incentive which leads a man to work to improve his own property for his own profit is absent when it comes to working with the community property for the common good. It is a very common fact, I think it is known to us all, that our fellow-citizens in their State activities frequently do not exhibit the same thrift and care that are exhibited by individuals in their own private affairs; and this is true, unfortunately, of many men of affairs who have come into the Legislature, who, when dealing with the public property and the public interests, manifest a carelessness that they never exhibit in their own business.

The right of property, however, is not one about which there is anything sacred. It must yield of necessity to the common interest; and personally, so far as I am concerned, when property rights stand in the way of the common interest it is so much the worse for the property rights; and in my legislative career, at least, I never have gained any rating as a radical at that. The difficulty with all of the water conservation legislation that we have dealt with, and the difficulty with the proposition, as I take it, from the standpoint of the gentleman from Lexington that we have before us, is this: That it may give the Legislature power to dispossess the owners of property rights and damage such rights as they have.

Now, what he wants to do in the case of agricultural resources is to hold us down to the simple proposition of drainage and irrigation, if I mistake not his idea. If I recall rightly the proposition that he advocated, but which I think he did not move as an amendment, relative to the form which this amendment should take relative to water rights, it was that it should be confined merely to two propositions, — the building of storage dams and reservoirs, and the assessment of betterments on those who are benefited by those schemes.

Now, taking up the subject of water rights at large, I want to point out this, — that the Commission on Waterways and Public Lands in their very thorough study of the subject point out two things: First, that the creation of new storage facilities is only part of the problem; second, that the assessment of betterments is only part of the problem. There is a field in between there where perhaps the greatest saving in this matter may be made, that is not touched by either of those things. Take, for instance, an owner of water rights along a river who is developing them, but is developing them only to a part of their possibility. So much as he has not developed goes to waste. The water runs down the river, the power never is developed, and the community loses that which otherwise it might have. Also, the man who operates his plant for only part of the twenty-four hours when he might operate it all the twenty-four hours, — during the hours that he lets it lie idle the water runs down the river over the dam, and there is so much waste or loss to the community. Take also the case of a man who is using his property in a wasteful manner and letting the water that otherwise he might use for power go to waste. In all of those cases there is an economic loss to the community which it is highly desirable should not occur. The loss is not to the man alone but to the community at large. It is for that reason I think such a proposition should be somewhat broader than

the somewhat restricted form in which the gentleman from Lexington would have it. It is for that reason that I would urge the amendment as it stands rather than in the form in which he has put it, or which he has moved as an amendment.

There is a certain fear in this Convention which sometimes is manifested, either tacitly or openly, that the General Court, having been granted power, ample power, might run wild and do all sorts of things with vested interests. That is very unlikely to be the case. At the last session of this Convention we passed a constitutional amendment for submission to the people which gave the cities and towns, under certain restrictions, the power to provide in times of emergency shelter for their inhabitants. The proposition was brought up to the General Court that in time of emergency cities or towns might build homes for their inhabitants. The General Court in its wisdom threw that proposition out of the window without very much delay; and it is worth while to say, in view of some things that have been said about the branch of the General Court of which I happen to be a member, that the funeral on that occasion took place, not in the "graveyard of legislation," but in the supposedly popular lower branch. My experience, running over some nine years in the General Court, has been that private interests in the hands of the General Court have been pretty safe; that the General Court in that time never has entertained legislation that was at all confiscatory in its nature, and never has failed to observe a measure of fairness and justice in dealing with all property interests that have come before it. Its action in those respects has been the reverse of revolutionary and I have no expectation that it would be otherwise. The great safeguard of property interests in this Commonwealth is not the Constitution of the Commonwealth, important though that be; is not the courts, which are supposed to safeguard constitutional rights, and is not the General Court. It is the public sentiment in the community; and public sentiment, so far as I am able to be a judge of it, would be very much opposed to any action which unjustly deprived a man of the fruit of his labor or deprived him of the property which he was properly and justly employing.

The safeguard of property in this Commonwealth is beyond any of the written Constitution that is supposed to protect it. It rests in the public sentiment, and in that public sentiment, in the absence of a great change, it is entirely safe. I do not think that if this amendment goes through the course of legislation would be markedly changed. We already have had a number of propositions in the General Court looking to the conservation of water resources, either along one stream or along several streams. They always have met with the difficulty, which has seemed very great, of dodging around the Constitution. Results which a very general sentiment deemed to be desirable, — the saving of power, and the application of it to purposes of public and of private use, if you like, — were defeated because of the difficulty of framing such legislation in constitutional form.

It seems to me that it is desirable, if you wish to accomplish good, to leave this matter in the hands of the General Court in such way that they can deal with the proposition broadly and without straining themselves too much to dodge around the angles. It is for that

reason that I would urge the proposition in the simple form in which the committee gave it rather than in the more detailed form by which the gentleman from Lexington would seek to prevent the Legislature from acting as it probably never would act.

I therefore hope that the amendment offered by the gentleman from Lexington will not prevail, and that the resolution as drafted by the committee will be ordered to a second reading.

Mr. ADAMS of Quincy: I trust that this recommendation of the committee will be adopted. It seems to me to be on the whole one of the most important questions which can come before this Convention. It brings us directly up against the fundamental question which blocks all hope of a consistent improvement in our administration in this country; that is to say, against the interference of the judiciary. The whole question here lies upon a so-called protection to private property. Now, there is a great confusion of opinion, as it appears to me, on this whole question. It long has been the law of this country that there is no such thing as private property; that is to say, there is no such thing which is protected by law as a man's own. Everything that we have belongs to the public if the public has need of it. The only question is whether or not the public has need, so that it is a public purpose for which that property is used. It is not so very long since in the common law it was accepted doctrine that the property of the individual was at the mercy of the community without compensation if it were taken.

Now, you come down to the basis of this thing, and in primitive communities property is considered to be a man's own, and that the public has no right to it. It cannot touch it in any way; to touch it is a sin. But no community can survive in a high state of civilization where the public does not have the absolute right to take over a man's property if that property is needed by the public. That is the law of eminent domain. The only question is when the exigency arises, and our system is to leave that to the courts to determine. In every other civilized community in the world, I believe without exception, it is held, always held, that the exigency is determined by the people; that is to say, by whatever corresponds to what we should call the Legislature.

We are up against that question, and we have got to determine it; we have got to decide it one way or the other. You have got to lodge your supreme power in your people or in your courts. It has got to be somewhere, and it is a mere question of whether or not you are going to prefer the private interests to the public welfare. That is all there is in it. The courts have acted as the defender of the private interest. That is, from the beginning of our government, National and State, I think that I may say in a general way that is so, and in every country in the world it has been so. It has been so in England, so far as the English courts could act. The English, for their good fortune, never have allowed their courts to assume such a position as that. It has been so in France. As far as I know it has been so everywhere. The question has been, and still is: Where lies the power which is to regulate what is a public use? That is the supreme power, and you cannot go on, as I understand it, with any public work of any great magnitude or any great continuance, where this must not be determined by the people, — by the people in themselves or by the people in their collective capacity. It is not a question which can be de-

termined by law or by any abstract notion of what is said in a document. It is a thing which is determined by public necessity. It is a thing, Mr. President, which is determined from year to year by the necessities of the people, and it can be determined in no other way. That the citizen whose property is taken should be compensated properly is not disputed anywhere now. There is no danger that such universal law will be infringed. It is simply a question of whether or not a private interest is to come here and is to interfere between the movements of public opinion or public necessity because, as it conceives, its private interests will be damaged or interfered with. That is all there is to it; and wherever we turn here, on every hand, we see at once the moment a considerable private interest is threatened, that moment the public interest goes down.

Now, Mr. President, we are up against this problem, and it lies in a very narrow compass, — a very narrow compass indeed. It is brought right before us by this war. I do not see how any reasonable man can contemplate the position in which this country is now, with the difficulties by which it is encompassed, and fail to see that we must have command of our resources, that we cannot have private interests intervening; that if we do we are going to lose this war and there can be no help for us. The private interest must go down, the private interest must be absorbed by the public interest, and whichever way this vote goes it makes no difference. The same result will be arrived at in the end. It will be arrived at by economic competition, by these nations, once this war is settled, competing with each other, and it can be terminated in one way only. That is to say, that every community must have the most perfect command that is possible over its own resources, in order to use them in the most economic way. It must do that or the lagging community must perish.

It is useless for us to go back and say, as a gentleman said in a committee to which I belonged: "John Adams thought differently, and I agree with John Adams." But John Adams was a man of much too liberal a mind for this. If he had lived to-day, he never would have taken the position which he did a hundred and fifty years ago. In a hundred and fifty years this world, the world in which we live, has changed more than it had done from the time that our ancestors came out of their caves; and to say that you undertake to stand on the ground that John Adams stood on means that John Adams must have been an imbecile. If he stood on any such ground or any ground approaching that, now, he would be an imbecile, because the world has changed so that opinions he held then would be imbecile opinions now. Otherwise you would agree that his mind would not have changed, not have changed in a hundred and fifty years, and that is an absurd proposition, Mr. President. Of course his mind would change. Of course he would be influenced by the events which would go on about him, as the minds of all of us must be.

We must concede that we must move with the world, with the march of science, with the march of industry, or else we must yield to people who can so move; and we must accept propositions of this kind as modifications of our common law, as public benefits of the highest possible kind. Otherwise we simply must say that we are incapable of a democracy of movement, that we are incapable of thought, that we are incapable of keeping pace with the movement of the age in which we

live, because we are a democracy. Mr. President, if that is so, democracy ought to and must perish. If democracy means that we are to be hampered by written restrictions made a hundred and fifty years ago, then we must consent that we are ready to be wiped out.

I have occupied the time of this Convention quite long enough, but on a subject on which I feel very deeply. I feel that the very existence of this Nation depends on our recognizing this great principle, and I cannot conceive how any man, in the face of this war, can hesitate.

Mr. Lyman of Easthampton moved that the new draft be amended by striking out, in line 3, the word "agricultural."

The PRESIDING OFFICER: The attention of the gentleman is called to the fact that that amendment already is proposed by the gentleman from Lexington (Mr. Clapp).

Mr. LYMAN: I am not so informed. I move to strike out the word entirely; he offers an amendment to take the place of it.

The PRESIDING OFFICER: The amendment of the gentleman from Lexington was in two parts, one of them to strike out the word which you have proposed to strike out, and the other was in addition.

Mr. LYMAN: Then that amendment, to strike out the word "agricultural," is before the Convention?

The PRESIDING OFFICER: It is.

Mr. LYMAN: I do not know much about the water-powers or mineral lands generally, but I know that in my district there is a lead mine that I do not think it would require an amendment to the Constitution to compel the owners to unload. [Laughter.] I am opposed to the substitute amendment of the gentleman from Lexington in regard to the swamps, because that is very well taken care of in Senate Bill No. 388 of this year, a plan that has been worked out, whereby marsh and swamp lands can be drained without burdening the Commonwealth with the entire expense. So, sir, with only one-third of the area of land under cultivation that formerly was under cultivation in this Commonwealth, and with thousands upon thousands of acres that could be brought under cultivation at comparatively small expense in this Commonwealth, and with those farms which now are under cultivation capable of doubling their output without reaching their capacity, an amendment of this character is absolutely unnecessary, and for this reason: Because I believe, sir, if the time ever comes when conditions again justify the tilling of a larger area, private enterprise and the Legislature itself will take care of it. Therefore I say to you, if you must pass this resolution, you ought to adopt my amendment. [Applause.]

Mr. CHANDLER of Somerville: While I regard this as a very important question, I do not believe by discussing it any longer you are going to change any votes, and I therefore move the previous question.

Mr. SAWYER of Ware: I sincerely hope this Convention will pass the resolution as recommended by the committee and so ably argued by the gentleman from Worcester and the gentleman from Quincy. But it is pointed out to us by the Governor of the State in his inaugural that this State at the present time is producing only one-seventh of the food that we consume. Out of about $360,000,000 worth a year only $50,000,000 is produced in this State.

Now, Mr. President, if you will go through the five western counties of

this State you will find vast tracts of unused land. The farmers who are on that land, or the owners thereof, do not have the means to put that land to any use. It is not developed. They have not the money to buy machinery, they have not the money to stock the places, they have not the money to get the labor to clear them up. If those vast tracts of land are to be used again it must be developed by public money, by public capital, that can wait three, four or five or six years, if necessary, for its return. Private capital cannot go there. And what is more, the people who live in those places do not have the outlook, even if they had the money; they do not have that large vision of collective interest on public action that is necessary under the conditions.

As much as we hate the use to which scientific German collectivism has put the resources of that Nation, we pay tribute through the fact that it is taking twenty nations of us to beat her; that Germany, by just such a thing as would be possible by this amendment, before the war was the largest exporter of wood pulp for making paper. The most destructive of all forms of the use of anything that is grown on the land is the cutting down of everything to make wood pulp for paper, and yet by scientific reforestation Germany has become the largest exporting Nation in the world of that sort of thing.

That shows to us what a collective action, that sees the needs of a whole people, can do. If we will pass this amendment, as proposed by the committee, the Legislature will be free, the people will be free in the future, to take just such action as is needed. I hope all these amendments offered will be rejected.

Mr. HOBBS: I am not going to use my ten minutes. I have dilated already on this subject at some length. The only thing I desire to talk upon is as to the exclusion of the word "agricultural."

The gentleman refers to an act in the General Court with which I am not familiar. Of course we have had for a long time legislation relating to drainage districts and to schemes for draining low-lying land. They are of quite ancient origin, and have been utilized in very few instances. It is a question in my mind if it would be possible to procure really satisfactory legislation of this sort without further constitutional power, and on that subject I think the secretary of the State Board of Agriculture was inclined to agree with me. He came before our committee at the time that this matter was under consideration, and spoke of the necessity of doing something to increase the power of the State in dealing with low-lying lands. I admit that one difficulty with agriculture in this Commonwealth is the difficulty of getting people to work on the land, but that we trust is merely a temporary condition and not a permanent one. What we can do under this amendment I think would be of distinct advantage to the community in increasing the amount of land which shall be used for agricultural purposes.

The amendment moved by Mr. Lyman was rejected.

The amendments moved by Mr. Clapp were rejected, by a vote of 31 to 90.

The resolution (No. 344) was ordered to a third reading, Thursday, June 13.

The resolution was read a third time Wednesday, July 24, 1918, in the following form as changed by the committee on Form and Phraseology (No. 379):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The conservation, development and utilization of the agricultural, mineral, forest and water resources of the Commonwealth are public uses, and the General Court shall have power to provide for the taking, by purchase or otherwise, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof and to enact legislation necessary or expedient therefor.

Mr. CLAPP of Lexington: The resolution which is now before us and the reception it has received thus far, even from the conservative side of the Convention, have stirred in me certain feelings which I should like briefly to express.

I think that all of us have found in this Convention a school which has taught and is teaching us useful lessons. One of these lessons is to respect the honest opinions of our fellows.

The PRESIDENT: The member will suspend for a moment. For the information of the Convention the Chair directs the attention of the Convention to the fact that the resolution in its present form is the form as reported by the committee on Form and Phraseology, and will be found printed in document No. 379. That is the form that is now before the Convention.

Mr. CLAPP: One of these lessons so taught us is to respect the honest opinions of our fellows, and to reëxamine the basis of our own opinions. When one finds himself differing widely from another member whom he always has regarded as a man of high character and sound practical judgment, that fact tends to shake his confidence in the soundness of his own opinions, and to force him to a more careful study of proposals as to which he has sustained definite convictions. At times I have found myself greatly surprised at the views expressed by men in this Convention with whom in most things I am in entire accord. To some extent I have been consciously influenced by them; and probably the subtle influences which operate through contact of mind with mind will produce in me later on effects of which I now am unaware. I do not anticipate that I ever shall find myself in general accord with the delegate from New Bedford who sits near me (Mr. Harriman); but long ago the sincerity of conviction which shines through the expression of his mistaken theories about government led me to respect the man, and his keen interest in all things human touches a responsive chord in all of our hearts. This general thought about the influence of our surroundings upon us brings to mind an anecdote of my boyhood days In the little town of Montague, where I was born and where I attended the public schools, there was a small family consisting only of the father, mother, and a single son. The boy, who attended the same school with me, in some way became addicted to profane and vulgar language. His habit in this regard became a subject of anxiety to his parents. They were at a loss to understand how he acquired it; and one day in the youth's absence they entered upon a discussion of the question, the father advancing a theory only to have it negatived by the mother, and then the mother suggesting an explanation which the father said was not right. And

so the conversation went on until finally the father as by an inspiration caught the true reason. "Why, Mary," said he, "I know what it is that makes Johnny swear so and use such bad language: it's them d —— d school children!" I do not know just what the final effect of this subtle influence of the atmosphere of the Convention may be upon me, whether in time to come I shall be more or less conservative, but that it is having its influence I do not doubt.

Now, while I have tried to give due weight to the views of those favoring the resolution, I am unable to persuade myself that in its present broad form it is either necessary or wise. It has not yet received the attention and discussion which its importance deserves; and I trust that the delegates will not advance the measure another stage without a full understanding of what it means.

There is I think no proposal now before the Convention which is so well adapted to bring out the opposing views regarding the proper scope and function of our Constitution. On the one hand there are those of whom the delegate from Barnstable (Mr. Bodfish) spoke the other day (and of whom I infer that he is one) who believe that we should adopt substantially the British system of no constitutional restraints so far as the powers or functions of government are concerned.

Mr. Bodfish of Barnstable addressed the Chair.

Mr. CLAPP: I would rather not yield until I have finished these remarks, and then I shall be glad to answer any questions that I may be able to. If I have done the gentleman injustice by classifying him with that group, I shall be only too happy to withdraw the suggestion.

I say there is one class of people who believe that we should adopt substantially the British system of no constitutional restraints so far as the powers or functions of government are concerned, and that, save a few clauses in the Bill of Rights, such as those giving compensation for private property taken for public uses, guaranteeing freedom of conscience and of speech, preserving trial by jury and the like, the Constitution should be drawn so as to leave what may be done by the government to the free determination of an all-powerful Legislature, or, I had better say, perhaps, of the law-making power. On the other hand there are those who still would have our Constitution operate so as to make it unlawful for the government to enter upon the ownership of property and the conduct of business in competition with private agencies, save only in cases where experience may have demonstrated that such a policy is clearly a wise thing to adopt. To this latter class, I need not say, I personally belong. Rather than throw away constitutional limitations and trust to the Legislature to see that socialistic experiments shall not be carried to the extent of undermining our system of individual initiative and freedom, I would approach the present-day problems from the opposite angle, and, holding to the substance of that system, as to a sheet-anchor, broaden the authorized scope of government only as reasonable necessity therefor shall be found to exist. Such course of procedure to my mind is not an obstruction to progress; rather is it the course of orderly and true progress. Let us not be deceived by the existence of the war and the special problems which it presents. In war time, Constitution or no Constitution, the government has inherent powers adequate to meet

all needs; and in the performance of the duties imposed upon us as delegates to this Convention there is nothing more constantly to be borne in mind than the fact that we are legislating for periods of peace and not of war. Let us keep in mind also another fact which some seem to forget, namely, that the opportunity to amend our Constitution will not end with the passing of this Convention.

What necessity, then, exists, or reasonably may be supposed to exist in the future, for declaring, as in substance the pending resolution does declare, that hereafter there shall be no constitutional objection to the State's acquiring, owning and operating, for the purposes of their development and utilization, the water, timber, agricultural and other natural resources to be found within our borders? I venture to say that no one can point out any such necessity or even expediency. Had the doctrine of this resolution been in the Constitution of the State when the cities of Lowell, Lawrence and Holyoke were established, I doubt very much whether capital could have been found to make the water-power developments which in fact were made in those places, and which have done so much, gentlemen, to promote the industrial prosperity of this great Commonwealth. To be sure there is not left a great abundance of natural resources that can be developed, outside of agriculture, and not a great many there; but such as they are, I, for one, am willing to trust in the main to what may be accomplished by private enterprise. I have pointed out at an earlier stage in this debate one difficulty that possibly may stand in the way of conserving some water-power that now goes to waste; but to remove that obstacle, if it exists, we need not authorize State ownership and control of all the soil in Massachusetts, or governmental competition with private enterprise throughout the whole field of water-power utilization and agricultural enterprise. The resolution says that the use or *utilization* of these resources is a public function. If so, I see no reason why the State or a municipality, with the approval of the Legislature, might not construct and operate upon some stream a mill or factory, and thus enter the field of industrial enterprise; for to do so would be to *utilize* a water-power or water resources. I do not know what would be the limit of the Legislature's authorized power under the proposed article of amendment. You may say that the Legislature would not abuse the power. I say do not confer it.

Again, there is in the proposal an attempt to broaden the police power as applied to the properties already developed. There is a grant of power to enact all laws necessary or expedient to regulate and control the conservation, development and *use* of the enumerated resources. That you can enlarge, as against the Federal Constitution, by State constitutional declaration, the existing police power, may be impossible theoretically; but in deciding whether a State statute unduly infringes the rights of private property, the United States Supreme Court, I think, would be influenced by a constitutional declaration pursuant to which the statute was passed. I have no fault to find with the decisions of our Massachusetts court in regard to the application of the so-called police power, which really is nothing but the power inherent in a government to protect its people, and which, as was said by Chief Justice Shaw, finds expression in that clause of the Constitution which says that the Legislature may make, ordain and establish all manner of wholesome and reasonable laws.

The member from Fall River in the third division (Mr. Morton), when sitting upon the bench, well said in the case of Turner v. Nye, 154 Mass. 579, speaking of the police power as authorizing to some extent the impairment of property rights without payment of compensation:

> Of necessity cases will arise where there will or may be a conflict of interests in the use or disposition of property, and questions may and will come up affecting the public welfare in regard to the use which shall or shall not be permitted of certain property. . . . Property may be so situated or of such a character that the absolute right of the individual owner to a certain extent must yield to or be modified by corresponding rights on the part of other owners, or by what is deemed on the whole to be for the public welfare.

Whatever differences of opinion there may be with regard to the decisions of courts in protection of intangible property, such as liberty of contracting, I do not see how any one can read the numerous cases in which the courts have upheld laws which limit and regulate the use of physical property in the interest of the public welfare, without being convinced that the Constitution needs no amendment, — so far as the matter of the police power in the aspect now being considered is concerned. The delegate from Worcester in the second division (Mr. Hobbs), a member of the Public Affairs Committee, when supporting the other day the amendment under consideration, spoke, as it seemed to me, in rather a light, easy-going fashion, with regard to rights of property, saying that in these days the tendency is to respect them less than formerly. Such I fear is the fact. If so, I say, let us not deliberately sanction the practice by constitutional declaration. To the extent that such rights ought to be abridged in respect of tangible property, I for one am willing to trust the matter to the judges, who, I contend, are responsive to the demands of matured public opinion; and under the liberalizing influence of this Convention outside of its formal enactments, they may be expected in future to respond even more readily.

Now, gentlemen, in conclusion, let me add a few words as to the socialistic aspect of the resolution as applied to agriculture. If the Convention shall pass it, I want the members to understand fully the tremendous scope and possible effect of the proposal. When last year the question of municipal trading was under debate the Convention took pains to negative any intention to authorize an invasion by the State or by any city or town in normal times of the field of individual initiative and enterprise; and the provision adopted was restricted so as to become only an emergency measure. What an opportunity, then, gentlemen, to smile at the absurdity of a situation we shall have, should the present proposal be adopted, — adopted, I mean, without further narrowing or amendment; for here the authority to be granted is one which would permit the State or any municipality to engage in agricultural pursuits at any time and without limit, so be it that the enterprise or business results in the utilization of agricultural lands. The city of Boston could be authorized to condemn and put to commercial use any suburban farm. I see no reason why it could not be permitted to engage in the business of market-gardening in competition with the farmers of the neighborhood. The Legislature could say to the farmers of Arlington: "You shall cease, or suspend for a period of time, the growing of celery, and devote your lands to the cultivation

of some other crops"; for the law-making power is to have the right to regulate the use, and control the use, of agricultural lands. The farmers in the Connecticut Valley might be forbidden to grow tobacco and required to substitute what the caprice of the moment might think a more useful crop. And the owners of farms throughout the State, in times of profound peace, could be made to rotate their crops in such fashion as the Legislature should prescribe rather than in accordance with their own judgment. Such possibilities, however remote, I for one do not believe in sanctioning, — at least not until experience shall have demonstrated some necessity for the action.

Now, my fellow-delegates, I do not want you to set me down as a reactionary conservative. I am willing to liberalize the Constitution in some respects. I am willing to stand for progress. I am not opposed to the State's giving some aid and encouragement to the development of agricultural and other resources. I would not oppose even the giving of financial aid, under some circumstances, to help individuals get started in the use and cultivation of these agricultural lands, — particularly the low, waste and undeveloped lands to which reference has been made so many times in the past debates. What I do object to is this wide open proposition which, as I have tried to make you see, authorizes the State to enter upon agricultural and even manufacturing business in competition with private agencies. That I am opposed to, and I believe that a majority of the delegates to this Convention are of the same opinion.

It is a pleasing sentimental declaration to say in substance, as does the resolution to which I am directing attention, that all natural resources are held in trust for the public benefit, just as it is to say that every citizen is a trustee who must exercise his right to vote in trust for the benefit of those who cannot vote. In a sense both such declarations are true; but are they not rather for use in appealing to the reason and patriotism of the people than in laying down legal principles for guiding and limiting the Legislature or law-making power under the Constitution? Phrases of vague and uncertain legal meaning should not be employed either in statutes or constitutional provisions, however praiseworthy the general sentiment declared.

Because of the opening of the door to possible State socialism within a very broad range of industrial and agricultural operations, and the discouragement of individual enterprise which would result from its passage, I oppose the resolution in its present form.

I move an amendment which is in the hands of the Secretary.

Mr. Clapp moved to amend the resolution as reported by the committee on Form and Phraseology (No. 379) by striking out, in line 3, the words "and utilization"; and by inserting between the words "conservation" and "development" the word "and"; and by striking out, in lines 9 and 10, the words "utilization and control"; and by inserting between the words "conservation" and "development", in line 9, the word "and", so that the article of amendment will read: —

The conservation and development of the agricultural, mineral, forest and water resources of the Commonwealth are public uses, and the General Court shall have power to provide for the taking, by purchase or otherwise, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation and development thereof, and to enact legislation necessary or expedient therefor.

Mr. LORING of Beverly: There is printed in the calendar notice that I shall move two amendments to the resolution as reported by the committee on Form and Phraseology. I think the Convention fully understands now that the committee on Form and Phraseology attempts to report back the measure in concise and legal language in the form that they believe the Convention meant to pass it. That is not always the way in which the committee, or members of the committee, would care to see it passed; and it is to remedy some of the possibilities of the resolution as it passed the Convention, after carefully attending to every debate that was had on it, that I have suggested the amendments which bear my name.

The first of these amendments which I move is that the words "and water resources" be struck out, and in place thereof "water and other natural resources" be inserted. That is, I broaden the measure by adding "other natural resources", and the reason for doing that is that there are some resources which are not enumerated and which should not be excluded, although we know them at the present time by the fact that they are omitted. For instance, there is the great force of the tides, which has been utilized heretofore in the Commonwealth. When I was a boy in Boston I used to skate on what was called the inner basin, and sometimes, when the ice was hard enough, on the outer basin. Beacon Street was the mill-dam in those days, and Exeter Street was the cross-dam. The water flowed in at high tide and filled both basins. Then as the tide receded the outer basin, contained by the mill-dam, was used for power. While the tide was rising, that basin having been emptied, the other basin, behind Exeter Street, was used for power, filling up that basin part way, and so continuous power was obtained whether the tide was rising or falling. In the days when coal became cheap it was not expedient and it was not economical to use the power of the tides for mills, but now that coal is becoming scarce and becoming dear it may be that we shall wish to use the power of the tides again; and so there may be other natural resources, which we have not in mind at the present time, that we may wish to use, which would be covered by the amendment that I propose. If there are no other such natural resources that we wish to use, then the amendment will not do any harm, because it will cover only those which are in existence.

The other amendment which I have proposed, and which I now move, is to strike out, in lines 4 and 5, the phrase "by purchase or otherwise", and insert in place thereof the words "upon payment of just compensation therefor." That is to say, that the Legislature may take, paying "just compensation therefor;" they cannot take by purchase or otherwise, which would cover not only taking by right of eminent domain but taking under the police power without paying any compensation whatever, possibly. I think the phrase "taking by purchase or otherwise" is the customary one in statutes, but the debate in this Convention has shown very conclusively that we are getting to construe things differently, and if there was a taking "by purchase or otherwise" it easily might be construed before long that it was taking by purchase, or taking by right of eminent domain, or taking under the police power without paying any compensation whatever. It seems to me that the matter ought to be settled definitely that the taking shall be only upon paying compensation.

Mr. WASHBURN of Middleborough: Shall I disturb the gentleman in his argument if I ask him a question at this time?

Mr. LORING: Not at all.

Mr. WASHBURN of Middleborough: I am very glad that he has made the suggestion to substitute for the words "by purchase or otherwise" the words "upon payment of just compensation therefor". As his committee says in its report, it seems to more accurately express the intention of the Convention. But what I want to call to his attention is this, — and it has just come under my observation, — that in No. 278, at the bottom of the page, "Resolution to extend the power of the Commonwealth to provide homes for citizens" (document No. 391), the committee has made there also the same recommendation, but in the amendment proposed the word "therefor" is omitted, so that it reads "upon payment of just compensation". So, too, in No. 285, on page 8 of the calendar (document No. 393), reported by the gentleman from Worcester (Mr. Hobbs), the committee has inserted the phrase "upon payment of just compensation." Of course the committee intends a uniform practice in this respect. Perhaps it is not very material, but either all the amendments should contain the word "therefor", or it should be eliminated from all.

Mr. LORING: I think that a uniform course is desirable, but I was not aware that there was any difference. I do not think the word "therefor" is particularly material in any of them.

Mr. WILLIAM S. KINNEY of Boston: Will the gentleman accept instead of the words "upon payment of just compensation therefor" the words "by eminent domain" ?

Mr. LORING: I have not considered the full bearing of that scope, and I would rather go on with the rest of my speech. If the gentleman from Boston (Mr. William S. Kinney) cares to substitute that motion, why, the Convention can consider it.

Mr. HART of Cambridge: I should like to ask a question of a different nature, namely, whether there is anything in the form proposed by the committee on Form and Phraseology which in any way would impair the right of the Commonwealth to receive real estate or similar property by gift.

Mr. LORING: I do not think so. There is an inherent power in any corporation or in any political body to receive things by gift, and I do not think that you could take it away from them without special legislation. For instance, when you say a member of Congress shall not receive any gift, or foreign decoration, or something of that kind. I think there has to be a specific provision of law that the thing shall not be taken by gift before the court will presume that a gift cannot be accepted by any corporation or individual.

Now, coming to the main question of the resolution itself, I should like to say a very few words. The member from Lexington (Mr. Clapp) in his interesting address says that we do not want to be carried away by the fact that we are at war and to treat these questions on a war basis. It is precisely on the contrary basis that I think this measure should be passed by this Convention. We are at war, but we all expect to be at peace again. When peace comes, however, we do not wish to be caught entirely unprepared for peace, as we were caught entirely unprepared for war. In fact, if we do not take some measures looking toward peace and preparing for peace we will be

the only Nation in the world that is now at war that is not considering such questions. In Australia already there has been a commission appointed to take care of the soldiers when they come back from the war, and that commission proposes to start soldiers in farming, to instruct them, to start them in agriculture, in raising beets, in raising sisal grass, in raising many products that might be and may be raised in Australia that are not raised there now. They mean not only to provide these soldiers with the land on which to settle; they mean to provide them with the means for starting a farm, and they mean to put men among them to instruct them in farming, so that they shall not make the failure which a person who is not educated in farming is apt to make when he undertakes to cultivate the land. They do not mean to confine themselves only to that; they mean to develop through their returning soldiers many possibilities of power and manufacturing which that Commonwealth has and which it has not yet developed. And it seems wise that we, too, should provide some means by which we can take many of those young men who are coming back and who will come back without an occupation, so that they can be put to something that will be very useful and will advance the fortunes of the Commonwealth as well as their own fortunes. It is not, therefore, as a war measure but as a peace measure that I think this matter should be viewed.

As to the suggestion that it is a novelty for us to regulate the crops that a man shall raise on his land, I have had something to do with mining down in Kentucky, and I know that the mountaineers down there think that it is very outrageous that they cannot use their corn to make corn whisky or their rye to make rye whisky if they choose, and that they should be restricted to raising it for the purpose of bread, which they do not like so well. So that really, gentlemen, it is nothing so novel that we should say that a man down in Connecticut, who, by the way, we have no jurisdiction over, should not be allowed to raise tobacco on his land. If there was a sentiment that tobacco was a noxious weed, — and it makes me sick, — it might be that we should say that they should not raise tobacco on their land, and it would not be a novel principle if such a thing was said.

As I understand the gentleman from Lexington (Mr. Clapp) his chief objection to the resolution, — and I want to be perfectly fair, — is that while we might take the land, and we might take the water-power, and we might take other natural resources for the matter of development, we should not afterwards keep them and control them. There is something to be said in favor of this attitude. I confess that it has a great deal of my sympathy. I think that I do not go so far as caring for the government's keeping the railroad lines and the telegraph lines after the war. I think it is all right for them to take them as a war measure; I do not care for them to keep them and control them. And so after the government has taken the water-power or some other utilities of that kind I think they well might turn them back to individual management, and I think they would be managed fully as well as they would by the government themselves. And so, gentlemen, I am in favor of the amendment of the gentleman from Lexington (Mr. Clapp). I hope, however, that the resolution otherwise will pass, with the three amendments designated.

Mr. William S. Kinney of Boston moved that the resolution (No. 379) be amended by striking out, in line 9, the word "proper".

Mr. KINNEY: Unlike the two gentlemen who have preceded me, I am not only in favor of the principle of the resolution in its present form, but the amendment which I offer will broaden the scope of the amendment to some extent. I offer this amendment after a conference with the special committee of the Legislature appointed to study the question of water resources of the Commonwealth, and after a conference with the Attorney-General's office. Such legal opinion as can be secured is to the effect that the presence of the word "proper" in the eighth line of this amendment will constitute the question of the propriety and advisability of the Commonwealth's developing the water resources a legal and judicial question for the Supreme Judicial Court. That is the effect of the retention of the word "proper" in this resolution. If the word "proper" is stricken out the question of the propriety or advisability of the Commonwealth's developing its water resources will be a question within the sole jurisdiction of the Legislature.

This question of water resources is not in any way involved with returning soldiers or any other special war purpose. What the Commonwealth can do with the water resources of the Commonwealth which already has not been done by private capital, the practical thing which the Commonwealth can do for the benefit of its citizens by the utilization of its water resources, is substantially this: It can create at the head-waters of such streams as are available for these purposes reservoirs for the purpose of preserving the water which now runs to waste in the spring and in the time of the year when we have high water. It may retain that water in large reservoirs at the head-waters of these streams, and this water can be used as an equalizer to insure such a flow of water during the rest of the season as will permit the plants to be operated by a smaller use than they now make of coal, and in that manner conserve the coal supply and probably by the introduction of large hydro-electric plants manufacture electricity which can be used for heating and for lighting purposes and for power throughout the Commonwealth. Therefore, in so far as the water resources go the proposition is quite simple. Most of the important water courses of the Commonwealth already have been developed by private capital to a very large extent. There is this possibility of the Commonwealth's being able, by the construction of the reservoirs which I have indicated, to increase the utility of these water courses, and it can do so with a freer hand if this word "proper" is stricken out of this resolution.

I hope for that reason that the Convention will strike out the word "proper" and will reject the amendments offered by the gentleman from Lexington (Mr. Clapp) and the gentleman from Beverly (Mr. Loring). The words which the gentleman from Beverly (Mr. Loring) moves to insert, — "upon payment of just compensation therefor", — are not adjudicated words. If he had moved to insert the words "eminent domain" there perhaps would be no objection, because the taking by the Commonwealth of property by eminent domain is an adjudicated process, familiar to attorneys and courts and parties in interest; but no other compulsory taking is known, and it would be a

very uncertain matter to write the words "upon payment of just compensation therefor" into the Constitution, as no one would know accurately what sort of a taking was contemplated. Therefore I should object to the adoption of the amendment of the gentleman from Lexington (Mr. Clapp) and the amendments offered by the gentleman from Beverly (Mr. Loring).

Mr. Brown of Brockton: I should like to ask the gentleman this question: Would the use of the words "eminent domain" confer upon those who at present hold such title as they have to natural resources any more title than they now have? Suppose the question of their title is raised; that a natural resource being a common heritage, — by the way, I am the mover of this resolution, so that I am interested, — whether it ever could have been transferred to an individual. Does using the words "eminent domain" cure that possible defect in the title so as to make it more valuable to the holder?

Mr. Kinney: The language in the resolution as it is printed, saying "may take by purchase or otherwise," would leave open a taking, possibly by the police power, without compensation —

Mr. Brown: That I do not favor.

Mr. Kinney: — possibly a taking by the Commonwealth under the exercise of the police power in emergency cases without compensation. If we substitute the words "may take by eminent domain," as I understand it, we, to answer the gentleman, will not acquiesce in the title of any persons claiming under the Mill Acts or otherwise. We simply will define, in language which will be known to everybody conversant with legal language, and to the court, the power by which the Commonwealth may make a taking.

Mr. Avery of Holyoke: I should like to ask the gentleman from Boston a question. In your opinion would this resolution enable the General Court to authorize a great power company, such as the New England Power Company, or the Turners Falls Power Company, to go in and take by eminent domain, for the development of its own schemes, private property?

Mr. Kinney: I should say that the language of this resolution provides that the Commonwealth may make these takings for public uses, and that it itself is limited to such takings for public uses, and that under this resolution the Commonwealth would have no authority to delegate to any private corporation authority to make a taking for a private use. I so understand after conference with the Attorney-General.

Mr. Blackmur of Quincy: A question. I should like to ask the gentleman if the exercise of the right of eminent domain does not involve necessarily the payment of just compensation therefor; and, if that is true, is it not better to state it in plain language, that does not require a constitutional lawyer to determine what it means?

Mr. Kinney: To answer the gentleman, — and I think he knows the answer as well as I, — not only do the words "eminent domain" imply the payment of compensation, but they also to a certain extent define the character of the taking, while the use of the words as moved by the gentleman from Beverly (Mr. Loring) in no sense define the character of the taking. They are uncertain, vague words, which to the best of my knowledge and belief never have been adjudicated. Therefore I say that if the Convention proposes to adopt, — as I hope

it will not, — but if it does propose to adopt any such amendment as that moved by the gentleman from Beverly, I hope it will adopt, in place of the words found on page 3 of the calendar which he has suggested, the words "by eminent domain."

Mr. Hobbs of Worcester: I should like to call the attention of the gentleman from Boston to the tenth article of the Bill of Rights, which is the article under which the Commonwealth is supposed to exercise the right of eminent domain. I will not ask him if the language of that article contains the words "eminent domain," because it does not. But I will ask him if the language used in that article, which is as follows: "Whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor", — if those words are not practically the words of, or whether they are not along very similar lines to, the amendment under discussion?

Mr. Kinney: To answer the gentleman from Worcester, the language that he quotes is merely incidental to the exercise of a public power, in no sense defining the power itself. The amendment as suggested by the gentleman from Beverly is more comprehensive. Therefore I suggest that if we are to create at once a power and attempt to define it, we might better use well adjudicated words.

Mr. Churchill of Amherst: I should like to pursue a little further, purely for purposes of information, the question raised by the gentleman from Holyoke (Mr. Avery). If I understood his question rightly it was to this effect: Whether under this article as worded it might not be possible for the Commonwealth to allow a private corporation to make use of certain water resources taken over under this amendment by the Commonwealth; and the answer of the gentleman who is speaking was that the amendment limited such use to public use. I should like to ask whether, in a certain respect at least, that is not warping the words of the amendment. "The conservation, development and utilization" of these resources "are public uses." I want to make absolutely sure of the interpretation of this amendment. If the amendment declares that the utilization of a resource is a public use, and this resource is utilized, does not that utilization become, under the terms of this amendment, by definition, a public use? And is not then the question of the gentleman from Holyoke not answered by the statement of the gentleman from Boston? Would not his statement, in other words, imply that he is interpreting this amendment to be that a utilization of the water resources of the Commonwealth is a public use, provided such utilization is for a public use?

Mr. Kinney: As I understood the question of the gentleman from Holyoke (Mr. Avery) to which the gentleman from Amherst (Mr. Churchill) now refers, the gentleman from Holyoke asked me whether or not the Commonwealth, if this resolution is adopted, could delegate to the private corporations, such as the Turners Falls Power Company, authority to make takings, and then use the benefit derived for their private purposes. I answered that, as I have been informed by attorneys, and by the Attorney-General's office of this Commonwealth, it is the opinion of the majority, — there are one or two who take an opposite view, — that the Commonwealth itself by this resolution might make a public taking of water courses, and that such takings hereby are declared to be public uses, but that the Commonwealth

could not delegate to private concerns the authority to make takings for private purposes.

Mr. MANCOVITZ of Boston: I might suggest to the gentleman that if you take the fifth line of the resolution reported by the committee on Form and Phraseology and add the words "by the power of" after the word "authorize," would not that amendment prohibit the General Court from giving the power to private individuals?

Mr. KINNEY: I did not get the word that the gentleman suggested might be included.

Mr. MANCOVITZ: "By the power of" (the Commonwealth) after the word "authorize."

Mr. KINNEY: I think that would be undesirable, because I think it is highly probable that the Commonwealth would create some agency to make any development which it might contemplate.

Mr. MANCOVITZ: Does he mean by that that the Commonwealth should delegate its power to private individuals or corporations, to control or manage, and to develop natural resources after their own fashion?

Mr. KINNEY: I assume that in discussing the question in this phase anything that we may say about it would be mere assumption and conjecture, because it will be a question for later legislation to decide; but I simply assume that if the Commonwealth decides to go in and develop further the water resources of this Commonwealth, the Legislature will deem it advisable to create some agencies to do that development work, under the control and direction of the Commonwealth; some boards, perhaps analogous to the metropolitan commissions, will be created; and therefore I should not care to encumber this resolution by words that would restrict the authority of the Commonwealth to create such agencies, making it necessary, in the language suggested by the gentleman just now, that the taking be made by special act of the Legislature. Every individual taking, if that language is adopted, would have to be by an individual and special act, which I think would be highly undesirable and would compel constant recourse to the Legislature for such legislation.

Mr. HART of Cambridge: I should like to ask why the gentleman affects a form of words which does not include the ordinary form of bargain and sale? Admitting this inherent right in the Commonwealth, is it an inherent right as applied to a novel use proposed in the amendment? His words are "eminent domain"; he says nothing of the other.

Mr. KINNEY: Evidently the gentleman from Cambridge has misunderstood my attitude. I say I am opposed to the adopting of the amendment of the gentleman from Beverly, and also the adoption of the amendment of the gentleman from Lexington, as they are narrowing amendments, and a restriction upon the powers conferred in this resolution. I believe those amendments should be defeated. The language of the resolution now is very broad as to the power to make a taking sufficiently broad for all the purposes which I believe are now in contemplation for public action. The only restrictive word in here is the word "proper" in the eighth line, which I have moved to have stricken out. I simply said that if you were proposing to adopt the amendment as suggested by the gentleman from Beverly it would be wiser, in that event, to use the words "by eminent domain," rather than to use the words which he has suggested.

Mr. ADAMS of Quincy: Might I suggest to the gentleman a question? I take it that all these amendments which we are presenting now are presented on the general principle that the Legislature of Massachusetts is a common thief, that it is not to be trusted, that it will steal if it can, and the object is to fence it about with as many restrictions as possible.

I wish to point out here that we are on the brink of a very great increment in industrial competition, and it is necessary that the community shall have its hands free to act for the common interest. I wish to ask the gentleman whether it is worth while to undertake to tie up the hands of the Legislature by all sorts of restrictions, when he must know that if the Legislature really is put under pressure to get that property it would take it without any compensation at all. It always can; the majority always can if it wants to. It is only respect for the rights of others that secures us; it is not these "scraps of paper" that the courts are called on to construe. The courts have not got the power to enforce respect for their construction. It is nothing but the opinion of the public as represented in the Legislature that we depend on for the sanctity of our property.

Mr. KINNEY: The gentleman has grasped the reasons why I oppose the amendment of the gentleman from Beverly and the amendment of the gentleman from Lexington, — because I do not wish to tie the hands of the Legislature any further than this resolution does, and because their amendments are for the purpose of narrowing and restricting the powers which it would grant to the Legislature.

Mr. BROWN of Brockton: I should like to ask the gentleman from Boston if he has taken note of the fact that the resolution or amendment by the gentleman from Beverly has added "other natural resources," which might bring in peat?

Mr. KINNEY: I had not given particular attention to the first part of the amendment offered by the gentleman from Beverly. The first part of the amendment which he offers does add additional words, which I suppose to that extent really would broaden the power.

Therefore, in closing, I would say that I hope these amendments will not be adopted, and that the word "proper" will be stricken out of this resolution.

Mr. DRESSER of Worcester: I hope that the amendments offered by the gentleman from Lexington and the amendments offered by the gentleman from Beverly will be adopted, — all of those amendments. It is quite true that, as the last speaker says, they are restrictive amendments. They are restrictive in this degree: They do not prevent the development and conservation of the waste or the undeveloped or unappropriated or unused natural resources; they do prevent the interference, direction or control, outside the police power, of the developed forests or agricultural lands or water-power.

Mr. KINNEY of Boston: I should like to ask the gentleman whether it is not true that, so far as the water resources of the Commonwealth go, private capital already has developed them in some degree, and that if we should adopt his suggestion and confine the future activities of the Commonwealth to such water resources as have not been developed at all, the resolution, so far as real constructive work went, would be practically useless?

Mr. DRESSER: I do not so understand. I do think that from

Worcester County east the water resources of the State have been developed as far as it is practicable, or perhaps from the southern part of Worcester County to the east. There are still some rivers which have been surveyed and discussed by the Commission on Waterways, which are capable of development; and, so far as I can see, we ought to make possible the development of our agricultural and our water resources so far as they are *natural* resources.

Now, this resolution finds its germ, its "natural resources," in the proposal (No. 231) by the gentleman from Brockton (Mr. Brown), who recognizes the point, because he said in his resolution: "The properties of water, coal, iron and oil *in their original states* are among the essential rights of mankind," etc. When the rapacious hands of the committee on Public Affairs got hold of that particular resolution they added to it, and said: Not only will we deal with the natural resources, but we will deal with the resources as developed by the investments and labor of men.

Now, iron in the ground is a natural resource; when iron is beaten into a ploughshare it is not. When water runs down a declivity it is a natural resource; when it is dammed and stored and power thereby developed it is not. The power that is created, the storage that is created, is an instrument made by man and is not a natural resource.

Mr. Brown of Brockton: I would ask the gentleman, if he cares to answer: If water is originally a natural resource, and a common heritage, can any generation bind the generation which is coming after? In other words, can you develop a property right, private, which is superior to the common right?

Mr. Dresser: To-day you can. When this resolution is passed you cannot. Every water-power, every farm, every forest, dealing with it individually will become a public use, and subject to the control of the Legislature, not only through its police power, but through its power of taking and regulating.

Now, it is undoubted, to my mind, that these resources being declared a public use, any agency which develops or conserves or utilizes them, whether it be a power company, whether it be a mill on the stream that wants to develop the head-waters and assess the damages on all mills down the stream, may be authorized by the Legislature to do so; and may act and be regulated just as the municipal light plant which is performing a public use, although it is a private concern for profit, just as the private water company in our towns is doing, just as the railroads. The reason why I think that this question of the utilization of *developed* land or *developed* water should not be left open, is first, the sort of dealing that it may get. It has got to be handled by a commission. Let me call the attention of the Convention to a measure which was proposed this last winter by the Commission on Waterways and Public Lands. That commission asked the Legislature to intrust it with the "general care and supervision of such water-power and water resources within the Commonwealth as are or may be capable of further development."

Section 2 says: "For the purpose of securing a greater use of the water-power resources now wholly or partially within the control of private citizens," this commission may order the owner to carry out such plans of construction or development as it sees fit, and in the event that such orders are not complied with the commission is

authorized to take possession as receiver of the property of the owners, to complete such development and to operate the old and the new properties until the costs to the Commonwealth are paid.

That was proposed to this year's Legislature by the commission that will have charge of the water question. Of course it is unconstitutional now. When this resolution is passed it will be constitutional. Do we want to do that? This is the time to decide whether that shall be the policy of the State or not. It means as a practical matter this: That a commission may come to a mill owner and say: "You must raise your dam ten feet, because during three months in the year the water wastes over the spillway, and if you raise it ten feet it is quite true that you will get no benefit of it, because you already have developed it to its economical capacity, which is never using the full value of the stream, but you are making possible some storage for somebody down below." And the man says: "Well, I can't see any return on that investment." And he cannot, because every mill owner has investigated that question ever since 1718, when the Mill Acts began.

Mr. CREAMER of Lynn: I should like to ask the delegate from Worcester if he desires to have this power confined wholly to the absolutely undeveloped resources of the State, or if he is willing to have it apply to these resources which are only partially or perhaps improperly developed?

Mr. DRESSER: I desire to have it apply to the undeveloped resources of the State, where this thing can be done practically and usefully and economically.

Mr. CREAMER: I should like to have the delegate from Worcester answer me, absolutely and directly. Does he desire to have this power restricted to those natural resources which have not been developed at all, and to refuse to grant this power to the government over those resources which have been only partially and improperly developed?

Mr. DRESSER: I thought I had answered it honestly. I will answer it again. I desire to keep it to the undeveloped and waste lands or waters, which in this State are needing development. I do not think it is wise that there should be established as a principle that the commission which may have charge of agriculture, or the forestry commission, or the waterways commission shall compel an owner to make developments for others, because I recognize and believe in private ownership in such matters. Of course if that is to be taken away, why, then all my argument falls.

Mr. CREAMER: I should like to ask the delegate from Worcester what he would do with those people who hold the natural resources of the State out of use, and only partially develop those resources that they hold out of use, for the sake of getting a larger price than they could if they properly developed them?

Mr. DRESSER: I do not know what could be done with such persons. They do not exist, as far as I am aware. The engineer, or one of the engineers of the commission, I believe, has stated that the water-powers that have been developed, the old privileges, have been developed as far as is practicable. I do not know how definite that is, but I understand that as a broad proposition, speaking now of water-power, the existing powers have been developed as much as possible.

I happened to have occasion a few years ago to inquire into some of the values of disused powers. I found that in Massachusetts there were 65 water-powers on the market selling at far less than their valuation. The small powers, the little village powers we all are familiar with, where the mill and the little village are one, have practically fallen into disuse. Such properties are revived sometimes, but it is not an economical proposition. It is not economical always. Here is a report of the National Chamber of Commerce which calls to the attention of its members some question as to water-powers, comparing them with steam, and combating what it calls the widely held but mistaken view that every water development is economical.

Our mill owners of Massachusetts have founded their business on the availability of water-power.

Mr. BROWN of Brockton: I should ask the gentleman if he will revert in his argument, to the point where he was interrupted by the gentleman from Lynn. He was speaking about this private ownership, what they had done, and I want to hear him on the question: Is that private title absolute? Could those who delegated the power give an absolute title that could refuse to raise that dam if it was necessary for a greater use than theirs? I wonder if I make myself understood. Could any private title to a natural resource be superior to a demand for the common good?

Mr. DRESSER: There is such a title by virtue of the grant of the proprietors of the Colony, by virtue of the Mill Acts, which first appeared, I think, in 1718, when mills were established for the common good. All these titles relate back, or the principal ones probably, to those sources. It is possible for this Convention to wipe them out; it can be done. It is for this Convention to say that there shall be no private property in land or water, or the development of land or water. I suppose that this Convention can take property without compensation, if it wishes, so far as our State Constitution is concerned, because we are deciding upon our fundamental guarantees, and the only thing that gives a title to property is our Constitution, — speaking, of course, of the State Constitution.

Now, it seems to me that it is unwise, as a practical matter, especially in view of one striking example from one commission which I have quoted, that this authority should be given so broadly as the resolution provides, and it is on that ground that I hope the amendments of the gentleman from Lexington and the gentleman from Beverly will prevail.

With reference to the amendment of the gentleman from Boston (Mr. William S. Kinney), striking out the word "proper," I should suppose that the opinion was sound that the word "proper" in the pending resolution is the only thing that is an anchor to windward. If that is stricken out there undoubtedly would be no supervision by the courts of any act under it. If the amendments of the gentlemen I spoke of, — the proposed amendments, — are adopted, why, then I do not think it makes much difference whether "proper" is left there or not, because they will leave to the power of the Legislature the thing which I suppose we all are content to leave there and have exercised. We want our wastes, our agricultural deserts, to blossom like the rose. We want our streams to be conserved. We want, if it is possible in any way, to develop hydro-electric power. We want it

brought to our houses. If it is possible to increase our manufacturing powers, or to cut down our costs, we want it done; and probably there is no stream in the Commonwealth now where a single individual, or a single interest, would find it economical to make that development. In New York it has been attempted; it is being attempted in other States; I would be glad to see it attempted here. But let us deal with the natural resources, and not deal with the property which years of effort on our part, years of effort in our mills and in our farms, under the guarantees of our laws, have developed.

Now, perhaps that is selfish; I suppose it is, if anything is to be secured to individuals, but it seems to me that distinction ought to be made.

Mr. David Mancovitz of Boston moved that the resolution (No. 379) be amended by inserting after the word "otherwise", in line 7, the words "by the Commonwealth."

Mr. MANCOVITZ: The purpose of the amendment, offered by me, is to clarify the intent of the resolution. I believe all of us agree, if the grant of power is to be exercised, it should be exercised by the Commonwealth alone and not by private individuals. As the resolution now reads it is possible for the Legislature to empower a private company to do the thing the Commonwealth can do. I believe the intention of the author of the amendment was to limit that power to the Commonwealth alone.

Mr. MORRILL of Haverhill: I hope the words "eminent domain" will not be placed in this amendment, because if they are it will be solely for the purpose of further handicapping cities and towns when they desire to institute public improvements; to build a school-house, for instance, when they must secure land on which to build it. As soon as a site is decided upon, or expected to be decided upon, the value of that site goes up. The city has to pay more for it than a private individual would have to pay. The fact that the public desires it for a public purpose becomes at once a valuable asset of the landowner and is at once incorporated in the price.

Now, in contrast to that, we might consider Germany's method of doing things. There are some good things done in Germany; at least there were before the war. Now, in Germany, when it was decided to enter into State ownership of some enterprises, there was not a great outcry made about it. Here we should cry long and loud for the effect on the stock market, if for no other reason. The thing was done very quietly over there. The government indirectly obtained the possession of a majority of the stock in certain enterprises, while that stock was at a low figure in the market. Then, having acquired the stock, the government came out boldly and announced that it was going to take over those enterprises upon whose ownership it had decided beforehand to exercise an influence. Thereby it secured the properties a great deal lower than American cities now secure land and other commodities needed in the public service after the owners have been "put wise" to what the municipality intends to do.

Also, in Germany, they have what they term excess condemnation. If they want to build a State highway, for instance, they obtain land for a great distance on both sides of the proposed right of way. After constructing the highway, the surplus land is sold at an increased

price. The expenditure of public money on the highway has added to the value of all that land; the government takes the surplus value. The highway in consequence costs the people nothing, or costs the government nothing as one wants to figure it. But in this country, why, the spokesmen for the vested interests and for our veiled and invisible government always are endeavoring to place restrictions on all progress by the people and to hamper them when they seek to adopt anything new.

To insert in this amendment the words "eminent domain" would be to do just that, — to interpose the usual handicap. I hope that, in that respect at least, we will stand by the report of the committee. I have found that all the committees up here have acted conservatively, and none of them can be accused of having been too radical. There is no reason, therefore, why we should try to overturn the action of the committee in regard to the methods by which the acquisition by the public should be brought about.

Mr. Adams of Quincy: I have spoken often in the Convention and I am afraid I have occupied too much of its time already, in pointing out the one great issue which is before this country and before this State, which is the clash between private and public interest. Now, we have got to take one course or the other. If we undertake to hold up the public, that is to say, if we undertake to throw the weight of this Convention in favor of the private interest, which always is trying to block movement in every direction, to that extent we are doing our best to favor the future revolution that is bound to come, and we need not undertake to delude ourselves on that subject. We are exactly like horses harnessed to a load which is going downhill. They can keep backing, backing, trying to hold the load up, but the time comes, and inevitably the time comes, when if that load is not lightened it breaks away and there is destruction.

We can consider this question exactly as well as if we were standing out before the whole people. The tendency of not only the whole world about us, but our whole country, is in one direction, and we are a little corner of that great world, trying to back up against it and hold it from movement. We cannot do it, and the more we struggle in defence of private interests, the more those private interests will suffer when the inevitable movement comes.

We have got to consider the public interest. In our own self-defence we have got to put it in the power of the public to utilize its resources to their greatest extent; and those resources can be utilized more economically, as has been proved abundantly in this war, by the community acting as a community, than they can be by private interests. That has been the secret of the marvels which Germany has wrought for four years in fighting the whole world; simply because Germany has been able, by its system of public administration, to utilize its resources more economically than the Allies have been able to utilize theirs. Had the Allies been able to establish and carry out as good a system as the Germans, the war would have ended within a very few months. Now we have been called into this war, in order that we may expend our resources with relation to a wasteful system, — a wasteful system in comparison, — because we cannot utilize our whole resources as cheaply as other people. If we cannot do it now, if we waste now, we have got to do it at some later time. We have

got to establish and carry out a system which shall be economical, and this resolution now before the Convention is one very modest step in that direction.

Mr. CREED of Boston: Last summer we heard this matter discussed three days in Committee of the Whole, we heard it on its other reading, and I move the previous question.

Mr. RICHARDSON of Newton: I have an amendment in the hands of the Secretary, which I should like to get in, — to strike out, in lines 6 and 7, the words "taking, by purchase or otherwise," and insert in place thereof the words "purchase, or taking by eminent domain."

Mr. HOBBS of Worcester: I dislike to object to the previous question, but I feel as though this was a sufficiently important proposition, especially as this is the last stage, for us to give it a little more time. We have some five or six amendments moved; they never have been in print. They will be on the calendar probably for the first time tomorrow. I, for one, have not had the opportunity that I should like to study those amendments, which are thrown in at the last minute, and which, if discussion is closed at this time, must be considered very immaturely. I consider that the spending of a little more time at this last stage is a great deal better than to run the risk of voting on these matters without careful consideration. I have endeavored to sit in the background thus far and not monopolize the time of the Convention on this subject, which I have discussed on several occasions before this body.

Personally I hope the previous question will not prevail, because I should like a little more than the ten minutes which the rules allow the member in charge of the report to speak after the previous question is moved. For that reason I hope at this time the previous question will not be ordered.

Mr. AVERY of Holyoke: I do not want to take but just a moment, but I hope the previous question will not be put just now. I do not intend to take up any time of the Convention; but this is a big proposition.

Some years ago a private corporation thought it would contrive a scheme to get power from the Commonwealth of Massachusetts, taking the land of private companies, building a great reservoir district, and then assess the cost of the development and operation on the owners of water-power away down the stream. That corporation since has made an alliance with other organizations in the State of Connecticut, at Windsor Locks. It has plans to sell its power in Connecticut and in Rhode Island. I should like to see this resolution so thoroughly discussed that there will be nothing in it which will enable a private corporation to come in and get powers from the Commonwealth of Massachusetts, involving eminent domain and public use, and then use those powers to the detriment of Massachusetts and to the private advantage of the corporation. There is a lot wrapped up in this resolution that does not show from a reading. I am in favor of its general principles. I believe in it, but I think we ought to take ample time to scan it pretty thoroughly.

Mr. BRYANT of Milton: I hope the previous question will not be voted at this time, not because I expect to speak upon this measure, but because I want some more instruction myself and should be very much interested to hear further than we have heard about this large

and important subject. I hope the previous question will not be voted at this time.

Mr. SHAW of Revere: I sincerely trust the gentleman in this division (Mr. Creed) will withdraw the motion. We have here one of the most important propositions that has come before this Convention at this session. There are no restrictions placed upon the Legislature, assuming this passes, and there is nothing in this matter which will prevent the Legislature from turning over to the Waterways Commission, if you will, the authority to lease these rights for a nominal rental, without taxation. All these great questions are involved in this matter; and for the purpose of discussing them, in order that we all may understand exactly what we are doing, I sincerely trust the gentleman will withdraw his motion.

The Convention rejected the motion that the main question be put forthwith.

Debate was resumed Thursday, July 25.

Mr. HOBBS of Worcester: This matter was discussed very thoroughly yesterday. It is gratifying to the committee which worked upon this matter to see a large and extensive interest in the matter, although personally I am somewhat disconsolate at finding myself apparently at variance with a number of the members of this Convention with whom I should be most glad to be in accord. I think it is fair to say that the school of political economy in which I was reared differed in no great degree from the school of political economy in which the gentleman from Lexington (Mr. Clapp) was reared. And yet upon this subject, although laboring upon the same committee, we have not been able to come to an agreement as to the precise terms of the amendment. To be sure, the difference is not a great one. It is spanned by the single word "utilization". The gentleman from Lexington is willing to go as far as conservation and development, but he is not willing to stand for utilization, because, as he says, that opens the way for the Commonwealth to go into all sorts of business. In a measure, of course, that is true. Utilization means simply the turning to account. And I presume if the Commonwealth is authorized to turn to account these properties which the amendment authorizes it to take, that unquestionably means that it could go into a variety of private businesses. As to whether that is the probable result of the amendment I shall have something to say later. Suffice it to say for the present that it is by no means probable that the Commonwealth would enlarge its present functions in any marked degree except under the press of dire necessity.

In the past few months, as I think the gentleman from Lexington, were he here, would agree, we have seen a most portentous development of the functions of the State and of the Nation. He has urged us to disregard war conditions, to deal with the subject on the basis of a normal condition. That may or may not be a safe thing to do. Whether, after the war, we shall have a reversion to conditions as they prevailed before the war is a consideration by no means certain. It may very well happen, as has been urged on this floor, that after the war we shall see battle on the field followed by competition for world markets, a strife in social conditions which will necessitate a possible further expansion of the functions of the State. Therefore

we must look on this matter not on any assumed former basis, but with the possibility ever before us of abnormal conditions, not only such as prevail in the present but such as may prevail in the future, for we are building a Constitution that is to work not only in peace but in war as well, that is fitted not merely for sailing on calm and friendly seas but is fitted also to weather the storm. Therefore, if I decline to meet the gentleman upon his basis of normal conditions, it is because I think it is necessary to take into account what has been happening in the last few months.

The great virtue of war is that it brings out at once the best and the worst that is inherent in humanity and in human institutions. To go no further than the one conception of property, — which is the one that is immediately concerned in this matter, — and the conception of the proper functions of the State, conceptions that we, I think, can visualize at a glance, let us consider the results of this touchstone applied to our conditions. On the subject of property we have seen on the one hand the nauseous take of profiteering, of seeking to grasp out of the necessities of the Nation an unjust gain, of taking advantage of a tragic position to control the necessities of life, to extract an unjust gain from the public. We have seen our friends of labor going forward under a formula for winning the war which may perhaps be adequately summed up in the line of the old poem:

Strike! Till the last armed foe expires.

We have seen the no less portentous instance of Lazarus emerging from the bosom of Abraham to go into partnership with Dives in the business of selling the Government rotten raincoats.

On the other hand, we have witnessed concepts of property yield to the public interest in a notable degree. We have seen the people of this Commonwealth and of this Nation yielding up generously of their property in charity, in taxation, and even contributing from their own sugar bucket and flour barrel to meet the necessities of the Nation and of our allies. We have seen even the sacred subject of land treated in an equally casual way. We have seen the man who had land that he could not use say to his brother who had none: "Come and till," and all about our great cities we have seen the wilderness blossom like the rose. We have seen the power of the State used with willing assent of the people to put these into actual effect. Fortunately, rigorous action has not been needed. Had it been needed the strong arm of the State to commandeer property unquestionably would have been exercised. Therefore, when we approach the subject of increasing the power of the State to take, we want to remember that the taking that we propose to authorize by this resolution is by no means more radical than the powers that the State, in this time of storm and stress, already is using.

As to the functions of the State, we grew up, I think, with the idea that the functions of the State should be relatively restricted, that they should go as short a distance as was consistent with the carrying on of the public affairs and that as much as possible should be left to private initiative. That principle I am far from claiming is entirely out of date. A State cannot overestimate the value, the overwhelming value, of private initiative in moulding and forming the character of its citizens. And yet during the last series of years, even before

the war, we have seen the functions of the State and of the cities and towns slowly added to. Our cities and towns very generally have gone into the business of supplying their inhabitants with some of the necessities of life. Water, for instance, is almost entirely now in the hands of the cities and towns of the State. The supplying of gas and electricity has been taken up by some of our municipalities, and others of our municipalities under authority that we have granted this last year, somewhat hesitatingly, perhaps, already are seeking to enter on the business of supplying their inhabitants with fuel. That process is, I think, an inevitable one under present conditions. When I first entered the General Court nothing would have been further from the minds of the citizens of this Commonwealth than that the Commonwealth should undertake to operate the great street railway systems of the Commonwealth. And yet when the emergency arose the very men who would have opposed it at that time were the ones to come up to the General Court in favor of it. So times change and so opinions change.

This proposition involves matters which have been under consideration for a long time, — the public interest in natural resources. The public wealth consists in land and the minerals under it, the streams that flow through it, the winds that blow over it and all of the matters which are given to us not by our own industry but by the bounty of nature. Those cannot be increased or added to in the main in any conceivable degree. There is a fixed quantity of them there and according to the use that we make of them we may grow great and flourish or we can stay as we are.

In the matter of farming, — and I am no farmer and therefore speak on this subject with considerable diffidence, — in the matter of farming there has been more than one occasion in the history of our race when a marked condition of social progress followed the introduction of new methods of farming, making it possible to raise more food upon the land they had and therefore making it support a larger population. The condition easily may arise whereby the State by intelligent action can increase the net product of food from the land of the Commonwealth and thereby confer an inestimable boon upon its inhabitants.

The subject of water supply, of increasing the power that is derived from our streams, of conserving the flow of water, of preventing floods, is a matter that the National government has considered long and seriously. I need not mention the extensive irrigation projects that the United States government has carried out. I think that those are familiar to all of us. Lately, of recent years, it has been proved that our streams contain in their flow the means whereby the lack of fuel and power from which so many localities suffer can be supplied through the medium of electricity; and the question arises now as to how that flow may be made most easily available for that and for other purposes.

Most of our streams in this Commonwealth are pretty well tied up by private rights. A great deal of our water-power has been developed. The report that I have before me of the Commission on Waterways and Private Lands, just in print, indicates pretty clearly that a notable proportion of our available water-power already is developed.

And yet that power was developed to meet the needs of manufac-

turing and industries which grew up, many of them, a considerable time before the present age and the later discoveries in science. It at once appears that there is a possibility of remolding and reconstructing those water-powers so as to produce the greater quantity of power which the Commonwealth needs. I wish to read, incidental to this, a small paragraph from this report which I have referred to. This refers to Miller's River and to the Westfield River:

> The greater part of the undeveloped fall of these streams is owned by private companies, and if the plans they have prepared for their development could be carried out there is little doubt but that a part and perhaps all of the proposed reservoirs could be profitably built. If, however, this storage is to be created by private capital it will probably require the coöperation of all the parties who will benefit therefrom; but the projects are so large and so many interests are affected that it is doubtful if it can be accomplished by a voluntary organization of the mills similar to those joint efforts which have brought about the construction of numerous small reservoirs on various streams throughout the State. Either State supervision of reservoir companies, or possibly even State construction of reservoirs, may prove desirable, and in any event it may be necessary to invoke the right of eminent domain to accomplish the desired result. The financial support of the State may also be necessary, and would undoubtedly be of great value to the projects.
>
> The advantages arising from the proposed systems of reservoirs would be —
>
> 1. An improvement of the existing privileges.
> 2. The development of the undeveloped stretches of the river, thus further utilizing the State's natural resources.
> 3. The equalization of the flow of these streams, which would increase their ability to overcome pollution during the summer months and make possible greater industrial development.
> 4. A lessening of floods, particularly on the Westfield River.
>
> It is believed that these projects are of sufficient size and importance to warrant the attention of the State.

I do not think I need to go into that matter at very great length. The subject is an immensely complicated one considering all the private interests involved. If left to individual initiative to bring about the desired result, it probably would fail. It already has been tried in one case and has failed through inability of the parties to get together. Unless the State undertakes to take a hand in this matter, and unless the power is given to make necessary takings of land, that projected development, in particular, which involves the possibility of a large increase in the resources of the Commonwealth would not be possible. That is one thing that this resolution undertakes to secure; I submit to the Convention that it is a reason why this resolution should pass.

As to the mineral resources of the Commonwealth, they are not particularly extensive. Still, we have some.

As to the other natural resources, I do not think, after the dissertation on them by the gentleman from Beverly (Mr. Loring) that I need to go into that matter further. Enough that there is at stake in this resolution the possibility of good.

As to the form of the resolution, there seems to be a greater degree of difficulty. A number of amendments have been moved. I wish to discuss them in somewhat other than the order in which they appear upon the calendar.

The first amendment of the gentleman from Beverly (Mr. Loring), striking out, in line 4, the words "and water resources," and inserting in place thereof the words, "water and other natural resources," I have no objection to. Nor have I objection to the amendment moved by the gentleman from Boston (Mr. Kinney), on page 2, striking out

the word "proper." I think that it would make no conceivable difference in the resolution.

As to the second amendment moved by the gentleman from Beverly, striking out the words "by purchase or otherwise," and inserting in place thereof the words "upon payment of just compensation therefor," I have no objection to the adoption of that amendment. I must confess that I cannot concur in the criticism of those words made by the gentleman from Boston yesterday. The words used are precisely those used in the tenth article of the Bill of Rights which I think does not even contain the words which he would have inserted, "eminent domain."

Mr. WALKER of Brookline: I am sorry to hear the gentleman say he has no objection to that amendment, and I wish to ask him whether he really means that or not. The words "by purchase or otherwise" are well-known, adjudicated words. They mean that property may be taken by purchase and sale or by eminent domain. They cannot mean anything else. It does not mean that property can be taken without paying for it. If property can be taken under the police power, it can be taken whether this resolution is passed or not. It seems to me that the words "by purchase or otherwise" are eminently fit words to be in this resolution and I trust that the gentleman will say they ought to stay there.

Mr. HOBBS: I am not at all certain that the net result is going to be very different whether the words are inserted or not. I do not think, however, that there can be any question, after having made a declaration of public use, but that the power of the State to make purchases is entirely inherent and would follow as a matter of course. I am inclined to think that if the language of the resolution remained as it was, that the guarantee of the tenth article of the Bill of Rights, that property should not be taken for public uses without compensation, would be entirely adequate to secure the same result. There are a number of members of the Convention who feel that a stipulation should be inserted relative to the payment of just compensation, and I see no harm in inserting that. Therefore I am not inclined to retract what I already have said.

Mr. DRESSER of Worcester: May I ask the gentleman whether the effect of this resolution would be either in whole or in part altered, if all after the words "public uses" were stricken out? In other words, is not the essence of the resolution contained in the first clause?

Mr. HOBBS: That is rather a large proposition. I am inclined to think that the declaration of these matters as public uses is the meat of the proposition. At the same time I do not feel that the succeeding words are entirely without value.

Now, as to the amendment moved by the gentleman from Boston (Mr. Mancovitz), printed on page 1, that the resolution be amended by inserting after the word "taking", in line 6, the words "by the Commonwealth", that may be considered in connection with the amendment moved by the gentleman from Lexington (Mr. Clapp), because they involve entirely different concepts. The one desires to strike out the word "utilization" for the purpose of limiting the power of the State; the other desires to insert the words "by the Commonwealth," so as to secure that nothing shall be done except by the

State. The two propositions are entirely opposed. If you adopt one you must not adopt the other. It is my impression that we would do well to adopt neither. The amendment of the gentleman from Boston, confining this matter to the functions of the State, it seems to me is highly undesirable. There are a number of these propositions which can be efficiently, and ought to be, worked out by private enterprise and private capital. There are, on the other hand, projects like, for instance, the Miller's River project, so complex and so difficult to carry through at all, that it is very questionable if they can be carried out entirely by private initiative. Suppose the State went in and built a series of reservoirs, such as the Commission on Waterways and Public Lands contemplated, — and this is said without passing upon the merits of that scheme. To whom is it going to turn them over after they have made the development there? It is for the benefit of all the enterprises all the way down the stream. There is no one to whom it can turn the development over. It either would have to erect an artificial person, a new corporation or association, to which it could turn it over, or else it would have to keep it itself. Now, it might be for the benefit of everybody that the State should retain control of those reservoirs, which are for the benefit of a great number of people, rather than undertake to bring the various parties into co-operation, in some form or other of organization. On that ground, if on no other, it seems to me that the amendment of neither gentleman ought to be adopted.

I do not feel that there is any such danger as the gentleman from Lexington anticipates of any great extension of the functions of the State. Our guarantee against State socialism is not the paper words of our Constitution; it is the sentiment of the people, which on the whole is in favor of private ownership and private activity, so far as practicable.

Mr. MORTON of Fall River: I should like to ask the gentleman, taking the resolution as it stands, with the word "proper" stricken out of it, which I understand him to assent to, — is there any limit to the extent to which the Legislature might go in deciding what conservation, development, etc., may warrant?

Mr. HOBBS: I am not familiar with any definition of the word "proper" that would furnish any serious handicap to the activities of the State in that respect. I may be wrong on that point, but it did not strike me, on such consideration as I was able to give to it, that the presence of that word would be a serious limit on the activities of the State.

Mr. MORTON: I did not mean to put any special emphasis upon the word "proper," but I understood the gentleman to assent to striking it out, and I took the resolution in the form in which that would leave it; but with it in or with it out, is there any limit, as the resolution is drawn, to the extent to which the Legislature may go in deciding what conservation and development, etc., require?

Mr. HOBBS: I think that the limit of the power of the State in other respects has been given in very general language and no serious harm has resulted therefrom. As to how far you want to tie the hands of the General Court down to specified lines and limits of action is, of course, a matter of discretion for the Convention. Some people think that the General Court, or the State, can work better

with shackles upon their limbs. I am not given to that way of thinking. It seems to me it is better to make the language of your power broad enough so that they can work without having too many constitutional impediments to rise and plague them and turn them aside from desirable lines of activity.

Here are certain lines of activity upon which I believe I have persuaded some of the Convention, at least, that there is a possibility of great good. You can give the General Court this power broadly and simply, or you can tie it down and fetter it with restrictions that, at every turn, will be a perpetual handicap against their doing anything, meaning a perpetual resort to the courts to find the limits of their power.

There is a possibility that you may decide to take that course. I rather hope you will not. I hope you will leave the Legislature as free to act in these matters as you dare to. Consider the broad and general language in which the police power, so called, for instance, is given to the Legislature, namely, the authority to pass all sorts of wholesome and reasonable laws. Can any power be broader than that, and has any serious harm resulted from the granting of so broad a power to the Legislature?

The Presiding Officer interrupted the speaker to announce a great victory by the Allied forces in the European War.

Mr. Hobbs: This bifurcation of my speech brings me nearer to the conclusion of it. It is not easy to work up to a climax which would seem anything more than an anti-climax after that announcement. I am going to content myself with a very brief request to the Convention to be as generous as possible to the powers they give to the General Court, remembering that in any event the action of the Legislature is not apt to be in contravention of the popular will. The General Court of Massachusetts has been proclaimed by many authorities to be closer to the people than any other State Legislature in the United States, and I think a fair inspection of its legislative records will indicate that it has not strayed very far from the beaten path of public opinion in the formulation of its State policies. Now, so long as the State desires the principle of private ownership and management to be maintained there is no danger that the Legislature will do anything else.

The functions of the State were designed not for the sake of giving this State the opportunity to do something, but because those functions were essential for the well-being of the community. If the State ever makes up its mind that these propositions, or any other propositions, are propositions for the community to handle, it will take more than a few words on paper to stop them. Therefore it seems to me that we waste a great deal of time in trying to forge verbal fetters to restrain the Legislature from doing what it is not at all likely to do. Certain well-known and persistent tendencies of the General Court that are not consistent with the public welfare may well be checked; but when it comes to the question of tying them up so that they cannot go into the farming business, cannot go into the manufacturing business, neither of which they are at all apt to go into on any extensive scale, although both of which they do go into to some extent at present, I think you are taking a very great deal of unnecessary trouble.

Mr. NEWTON of Everett: I should like to ask the gentleman if he has accepted the suggested amendment of the committee on Form and Phraseology, striking out the words "by purchase or otherwise," and inserting in place thereof the words "upon payment of just compensation therefor?"

Mr. HOBBS: Subject to correction, I did. I may say, while I do not see the necessity of it, I do not see any real good reason why those words should not be inserted if anybody considers they are of any value. The Constitution now guarantees for property taken for public use the payment of reasonable compensation, and I think that guarantee probably would extend to this amendment if adopted.

Mr. WALKER of Brookline: While we are on this point, it seems to me to be pertinent to pursue the discussion a little further. I understand the proposition is to strike out the words "by purchase or otherwise," and then insert other words in their place, — "upon payment of just compensation therefor." Of course, as the gentleman from Worcester (Mr. Hobbs) has said, in one sense it is unimportant, it does not make any difference. If property is taken just compensation will be paid therefor. The only point that I make is this: The words "by purchase or otherwise" are thoroughly understood. They have been interpreted by the courts. They do not mean that property may be taken without payment therefor. They have but one meaning, namely, that the property may be taken by purchase by the Commonwealth, or it must be taken by eminent domain.

Now, my point is this: That with words so well known, so thoroughly well adjudicated, it would be better to use them than to strike them out and use other words.

Mr. LORING of Beverly: The amendment proposed by me is to strike out the words "by purchase or otherwise." The reason for that amendment was that though "by purchase or otherwise" is used in statutes by the Commonwealth it is not used in the Constitution. It has not been interpreted that I know of and I have yet to see an instance in which it has been used, so far as constitutional provisions are concerned. It is true that as a statutory provision it has been interpreted, as the gentleman from Brookline (Mr. Walker) suggests. Now, if "by paying just compensation" is the language of the Bill of Rights, it seems to me in a constitutional provision it is better to state constitutional language. Moreover, having been interpreted in the statutory words, being subject to the provisions of the Constitution, "by paying just compensation," it does not follow but that if a strain were put on the interpretation of that act it might be very well interpreted in the future not as it has been interpreted as to statutes, but a new interpretation given to it, and it might well be said that in making a Constitution the constitutional provision was altered, and the statute operated under "just compensation," and did extend it to the police power, — taking it either by right of eminent domain or under the Commonwealth's right to take by the police power.

Therefore it seemed to me that this phrase, which might define perfectly the settlement of the question, was better than leaving it hung up with any doubt, to the possible future determination of the court.

Mr. HOBBS of Worcester: If I may be allowed to pursue the thread of my argument, which now has been badly scattered, I want to say,

in conclusion, that the principal amendment in importance is the amendment of the gentleman from Lexington (Mr. Clapp). That would introduce a serious limitation, it seems to me, upon this constitutional amendment. It would do two things. In the first place, it would do what the gentleman from Worcester (Mr. Dresser) apparently wants to do, — it would prevent the State from doing anything with a property which already was fully developed, irrespective of how necessary that might be to a general scheme of development. It seems to me that this is an undesirable result.

On the other hand, it would do what the gentleman from Lexington (Mr. Clapp) wants to do. It would confine the utilization of these properties, so far as the power to utilize them is contained in the power of the State to conserve and develop, to private initiative. While I am fully prepared to agree that in a great many cases it is better that that should be the case, there is a certain class of cases, particularly those of large importance, where it might be essential for the State to be the controlling factor. So many of our large water-power developments are intimately concerned with the question of public lighting and the distribution of power, both of which come fairly close to the present conception of proper fields of public endeavor, that it is not extending the matter a great way to allow the State to enter into this field. Therefore I hope that the amendment of the gentleman from Lexington (Mr. Clapp) will not prevail.

I hope also that the amendment of the gentleman from Boston (Mr. Mancovitz), limiting this to the Commonwealth, will not prevail because I think that would be equally mischievous.

As to the several amendments relative to the form in which we shall put the language relative to the taking and the payment of compensation, I think that the Convention has heard sufficient from me, and I will leave them to the guidance of those who may desire to discuss the question after me. I am firmly of the belief that no great mischief will be done by the adoption of the amendment, either of the gentleman from Beverly (Mr. Loring) or of the gentleman from Newton (Mr. Richardson). Either one will work about the same thing. As to the words "just compensation therefor," not having been interpreted, I presume it is a fair thing to say that no section of the Constitution has been under closer judicial scrutiny than the tenth article of the Bill of Rights, and if those words have not been judicially construed it is because they are too clear to need further construction.

Mr. Broderick of Waltham moved that the resolution be amended by adding at the end thereof the words ", and the standard by which the value of water rights and water privileges shall be determined shall be the volume of power utilized by the owner or owners or lessees thereof."

Mr. Broderick: I am aware that other members desire to be heard at this time and I shall say now only a very few words, though I hope that I may have the opportunity to speak more at length before the vote is taken. I have offered this amendment because I believe that the effect and utility of this amendment, if it should be adopted by this Convention and ratified by the people, will be hampered very seriously by the complications and expensive litigation that will arise in determining the value of water rights and water privileges. I believe that some standard should be fixed by this Convention whereby such values may be determined.

Mr. QUINCY of Boston: I want to add only a very few words to the very excellent speech of the gentleman from Worcester (Mr. Hobbs) the chairman of the committee. I think he has placed this whole matter before the Convention in a very clear light. It seems to me that this is eminently a case in which the Convention would do well to stand by the report of the committee and the attitude of the committee in regard to the various amendments proposed. My only excuse for taking a few moments is the fact that I have given a great deal of thought and study to this particular question which is covered by this amendment, and that I want particularly to emphasize the importance of adopting the first amendment offered by the gentleman from Beverly (Mr. Loring). There is a difference of opinion in the Convention, perhaps quite an acute difference, as to the desirability of adopting his second amendment, which relates to the form of words to be used.

Mr. WALKER of Brookline: If I may interrupt the gentleman at this point, I wish to say that I am satisfied with the explanation that has been made by the gentleman from Beverly (Mr. Loring), and I should like to withdraw my objection to that amendment.

Mr. QUINCY: I did not intend to say anything about the second amendment of the gentleman from Beverly or to take any position upon that question, but to ask the Convention to separate this first amendment from his second amendment. Now, his first amendment, to my mind, is very important, and I am very glad that the chairman of the committee has accepted that amendment, because it broadens in a very important respect the application of this amendment. It extends it to all natural resources, and clearly its scope should be as large as that. We are trying to provide for the development of the natural resources in Massachusetts, whether agricultural or fuel or power. I am specially interested in the development of the very great peat resources of this Commonwealth. The amendment as it stands, without the amendment of the gentleman from Beverly, would not allow action by the Legislature in regard to the control and development of our great deposits of peat. With the additional words in the amendment it would bring these within the scope of the action proposed. If he had not moved that amendment I should have done so myself.

In regard to the amendment of the gentleman from Boston (Mr. Mancovitz), I think that the chairman of the committee has taken a very sensible attitude in favor of entrusting the Legislature with the full power to utilize these new constitutional powers, in such manner as it sees fit. Why should we, if we are going to trust the Legislature with these new powers, undertake to say that they shall be used only by direct legislative action? I believe we should trust the Legislature to deal with each question upon its merits and upon its particular conditions, as it comes up. It may be the best policy for the Commonwealth to take directly, but it also may be the best policy for the Commonwealth to authorize a municipality, which perhaps was operating an electrical plant, to exercise this power of taking. It might be the best policy to authorize some public service corporation to exercise the power of taking. So let us not tie the hands of the Legislature in advance and prevent them from dealing with these questions according to the circumstances of each particular case.

Let me, in closing, merely express my own great satisfaction as a delegate at the very important work which this committee has done, and recognize the very great value which I believe will inhere in this amendment if adopted by this Convention and by the people in the form recommended by the committee. The prosperity of this State rests upon the furnishing to the people of sufficient food, which we cannot raise in our own limits; of sufficient fuel, which we cannot produce ourselves because we have not got it here; and of sufficient power to turn the wheels of our industries. Anything that we can do to add to the supply of food, to the supply of fuel, and to the supply of power in the Commonwealth of Massachusetts will contribute in a very important degree to maintaining the basis for our future prosperity. We use in this State nearly 2,200,000 horse-power. Our prosperity is founded upon the production of that power in the most economical manner possible. I think it is a conservative statement to say that at least 100,000 further horse-power could be developed from water-powers by the kind of action which the Legislature would be free to take, and possibly would take to a considerable extent, if this amendment passes.

I hope, therefore, that we shall follow the committee, not only upon this amendment, but in our action upon the amendments thereto which are proposed; and, more particularly, I trust that we shall vote down the amendment of the gentleman from Lexington (Mr. Clapp), to strike out the word "utilization." The whole conservation program of the National government has been criticized severely upon this ground that it provided only, in its initial stages at least, — the matter is being remedied now, — for conservation. What did that result in? It resulted in the tying up of an enormous amount of valuable natural resources. They were conserved but they were conserved by being taken out of use, and being tied up so that for a time no one could use them.

Now, we need conservation first, — the taking, the securing for the future public benefit. We need the power to develop; but we need also, subject to legislative discretion, which I believe we should trust, the power to utilize as it seems best to the Legislature, to utilize on the public account. There is no dangerous extension of the sphere of public trading here. I myself and various other gentlemen in the Convention would go a good deal further than this amendment goes; but I have refrained from proposing to go further in the interest of supporting the committee, of securing the very value which inheres in the proposition as it stands.

Mr. Shaw of Revere: I yield to no man in this Convention in regard to the conservation of the natural resources of our Commonwealth, but when you place the word "utilization" in this resolution, and incorporate it into our Constitution, I firmly believe you are going too far. As I understand that, it seems that if I own a piece of land and utilize it, that it becomes a public use, and at that time can be overseen by the Commonwealth of Massachusetts, under a legislative act, and, for the furtherance of that legislative act, be given to various boards or otherwise, or municipalities.

I am not a critic of the Legislature, but there are certain limitations that should be placed upon such tremendously broad, extraordinarily broad, powers as are contained in that resolution. We have instances

in the tax matters in this Commonwealth where lands of the Commonwealth have been singled out from the other lands owned by the Commonwealth; and the statute of 1909, chapter 385, part 1 of section 3, states that if a certain part of the lands of the Commonwealth, located in one ward of a city, are leased for business purposes, the lessee shall be taxed as if he were the owner of the fee. Mark the language of that statute: That if the lands of the Commonwealth, located in that one particular ward of a city, are leased, the lessee should be taxed as if he were the owner of the fee. That proposition came before the Legislature of Massachusetts in 1904, when the present mayor of Boston was a State Senator. At that time, when it was sought to enact that statute, he desired to include an amendment that if all the lands of the Commonwealth were used for business purposes they all should be taxed to the lessee as if he were the owner of the fee, making a general tax act. After various ramifications through the legislative committees, the committee on Ways and Means finally decided to pick out that one ward of a city, after all the facts had been presented to them and they put that statute through. That is an instance of the vast powers of the Legislature and their ability to pick out one particular piece of property and give it treatment not given to all others of like kind.

There are pieces of Commonwealth property in East Boston, there are pieces of Commonwealth property in Quincy, which are leased for business purposes and are not taxable. When the Commonwealth of Massachusetts by right of eminent domain takes lands by virtue of that act, those lands are withdrawn from taxation and it requires a special act of the Legislature in order to make those lands taxable.

Now, in the case in point, there are other lands in the vicinity, in this one ward of the city of Boston, that are held under a bond for a deed; there are others held under a license, business performed, a profit taken, on that very land, and no taxation to the Commonwealth of Massachusetts. It is unfair, it is unjust, it is unwarranted; and this very resolution places in the hands of the Legislature that same unwarrantable and unjustifiable power, that they may take in dealing with that property.

I am opposed to that amendment, — at least, opposed to this proposition; and if any amendment is passed by this Convention, I trust it will be the amendment of the gentleman from Boston. We have no quarrel with private ownership, nor have we any interest in their little fights amongst themselves. Let me instance this case: Suppose the Legislature takes the water-powers of Massachusetts by right of eminent domain. They pay reasonable compensation for the same. That property is withdrawn from taxation. Then the commission under which this particular division comes may take that property and they may lease it to their competitors for a nominal sum, and exempt from taxation. They may take my farm lands, if I have them, and the State Department of Agriculture may tell me that "you must do a certain thing upon your farm, otherwise you are deprived of your rights to them." They lay down special rules for me to follow on land which I own, occupy and utilize. Therefore I say that this word "utilization" is too broad; it makes it so that the operation and ownership of private property, utilized, becomes a public use. I think it is wrong in principle; and those illegitimate acts get their first footing from

slight deviations from recognized modes of legal procedure. We all have the right to be taxed and to operate under general laws, and I do not believe it right that we should incorporate into our Constitution any resolution which would give the Legislature of Massachusetts such tremendously broad powers to utilize as they saw fit. [Applause.]

Mr. Butler of Brockton: As a member of the committee on Public Affairs, and perhaps the member who was responsible for the word "agriculture" appearing in this measure, I feel it my duty to say a few words in regard to the vast amount of wet and waste land in the Commonwealth of Massachusetts. There are between 300,000 and 400,000 acres of waste lands in the State; it has been estimated that there are 500,000, but there are between 300,000 and 400,000 that we know are good for agricultural purposes. And I want to say that I had the honor of talking with an expert employed by the United States to look over the wet lands in conjunction with our State Department of Agriculture in Massachusetts, and he has said to me that in the great cedar swamp which is located within 40 miles of the city of Boston, within 20 miles of the city of Boston, there is land that is better for agricultural purposes than the great tide lands of Holland; it bears a better per cent of vegetable matter and would be better for agricultural purposes. And I want to say that there is need of the varied products, — of words that can be put into our Constitution giving our Legislature the right to develop those most valuable pieces of land. I am told by the State Department of Agriculture that private parties have combined together who would like to develop some of those pieces of land, but there are a few people who own some farms scattered around amongst it who say: "Here, you are going to make big piles of money out of this. We won't sell you our property at any reasonable price so that you can bring a public benefit to the whole people of Massachusetts." And so you see it is of vital importance that we should make this, as far as the agricultural part is concerned, as strong as possible, so that a vast amount of land in Massachusetts can be utilized. We to-day raise but about 15 per cent of what our people use, and I am of the opinion that if we could utilize the land in Massachusetts as it should be utilized, if we could raise crops as they should be raised, we could feed from 60 to 80 per cent of the people of Massachusetts from our own soil. That will seem big, but if you figure the amount of food that can be raised upon one good acre of land you will see it would be an easy matter to feed 60 per cent of the people of this State from its own soil.

Mr. Bryant of Milton: I should like to ask the speaker where those farms are located which it is proposed to take away from the owners if this amendment goes through.

Mr. Butler: I will say that I am not prepared to name the exact farms, but I will say that it would come in the range of one of our most productive sections of this waste land which is to be drained.

Mr. Bryant: I should like to ask the gentleman if he will specify the location to which he has reference, — the general location of the district.

Mr. Butler: I will say that the location is within 20 miles of the State House.

Mr. Lyman of Easthampton: I should like to ask the gentleman if

he would be willing to strike out the word "agricultural" and insert in place thereof "wet and waste lands", which to all intents and purposes, according to his argument, would cover the situation.

Mr. BUTLER: I think the word "agricultural" is the more important word, and I should not be willing to strike out the word "agricultural".

I think that there are other things that should be brought into consideration. In those wet lands in Massachusetts there are 25,000 acres that are of a peat nature, and that in time will be developed. To-day already there is a development of machinery which will compress peat. I hold in my hand a piece of compressed peat which ton for ton contains more heat units than a ton of our best anthracite coal, it is much cleaner to handle and much easier for the housewife to use, and I claim that when the machinery is got together, and it will be, that will compress that peat quickly —

Mr. ADAMS of Quincy: Would the gentleman kindly inform the Convention as to the relative cost of the peat which he is speaking of now and of a ton of anthracite coal delivered at a person's residence?

Mr. BUTLER: I am willing to say that at this time anthracite coal would be cheaper than peat, but when the machinery to compress peat quickly and take it from the ground is perfected peat would be on the basis of coal, and even cheaper than coal. Does that answer the gentleman?

Mr. ADAMS: I had understood that the scientific men at Technology were of opinion that the peat could be compressed and delivered more cheaply than anthracite coal at the present prices.

Mr. BUTLER: That is the understanding that I have with improved machinery, but to-day I do not think it can be done, because peat contains from 80 to 90 per cent water and it must be done at one process. It must be taken from the bed, which will be an easy matter, and when it leaves the machine it must be comparatively dry. So you see it is the development of machinery that stops the peat to-day.

I earnestly urge the passage of this resolution as coming from the committee, with the exception of the first amendment of Mr. Loring.

Mr. WELLMAN of Topsfield: For a long time I have been very much interested in the conservation of natural resources. I think it very important in Massachusetts that we should do what may be done in this direction, but I am not able to see that anything in that line requires the passage of such an amendment to the Constitution as is now proposed. I am inclined to think it is one of the most far-reaching of the measures now pending before us. We are trying to decide the policy of the Commonwealth.

It should be borne in mind that eminent domain is a tremendous power. We use it now to a limited extent, but every person of much experience in such matters well knows that grave injustice to the individual is often done at the present time. Now, here is a proposition to extend the right of eminent domain in regard to certain properties almost, if not entirely, without limit. I do not believe that we appreciate the extent to which the power is extended if this amendment is made. It is said, very properly, that the Legislature may restrict it. So it may, but we are doing away with all constitutional

guarantees, and do we want to do that in regard to such a matter? Has not the individual some rights that ought to be guaranteed by the Constitution in this matter? The policy, as I understand it, under which the Constitution was drawn, was that individuals should be guaranteed in their individual rights so far as that was consistent with the public interest. Now, is it desirable at this time to wipe away all those guarantees, as we are doing in this amendment, and say that the government at any time may stand before a man's farm or before his factory, and say: "This is no longer yours", and give no reason whatever and ask no court to pass upon it? That is giving government a tremendous power. Has that worked well? In the first place, if the government has that power, I think we may reasonably suppose that under present circumstances that power will be exercised with great extravagance and with great inefficiency, and when power is exercised in that way sooner or later the people have to pay, and in the next place, you are depriving individuals of their rights, their rights in property. You may say that that is for the public good. Well, now, who is going to be the government that has these tremendous powers?

It is significant to my mind that two of the speakers who have recommended this act have referred to Germany as their model, and one of the speakers asked yesterday: "Do you hear any outcry against these laws in Germany?" I do not think you do. I think any man who outcries against the power of the government in Germany soon ceases to cry at all, because he is crushed. You may say, for instance, that this power will be exercised by the people, but is there any instance in history of a government given such enormous powers in which those powers sooner or later have not fallen into the hands of a comparatively small class of the people? If you establish these great powers, are you not building up here a form of government in its infancy precisely like the despotism that you are trying to crush across the sea, and is it not an anomaly that on the very day when we are cheering the fight across the sea to crush the powers of Germany, men rise in this Convention and propose to adopt here the very methods that have builded up the German military despotism? [Applause.]

Mr. CHANDLER of Somerville: I believe that a prolonged debate on this subject will not change the general vote on it. I therefore move the previous question.

The main question was ordered.

Mr. BROWN of Brockton: I want to ask a question of this Convention, following the gentleman who last spoke. The natural right of an individual! Have I not, in common with others, a natural right in a resource which now has been delegated? I claim I have. It was a natural heritage. Has any delegation of power conferred any property right upon an individual? Has the individual a right to recover what he has expended upon it? Yes, because the people were guilty of *laches*, as you lawyers call it. My position is that to protect natural rights in the future we should have this control over natural resources. I want to put in here, and it was my only purpose in getting the floor, that there is one natural resource which has not been alluded to here, and in the future, if you pass this act and the Supreme

Judicial Court looks to discover all of the possible construction that was placed upon the words "other natural resources," it will find this one. What is your largest natural resource? What is the one resource that you cannot part with, because if you do you lose the Commonwealth? Why, it is the man power. There is a natural resource that is running to waste. If you are going to take some property for some purpose may it not be for the utilization of waste man power? Make the use direct and not as incidental. Let it be the direct purpose for which you take it. I want that to appear as one of the natural resources of this Commonwealth.

And that word, too, — Commonwealth. I believe there are only three other States that have got it. Cromwell, I think, is the fellow from whom it comes. But the beauty of it! Commonwealth, common weal, common good. The State to act for the common good.

The gentleman talks about Germany, about the dawn of peace, about the new democracy, about conflicts between labor and capital! Allow me to assume what I think is a possible case, a natural resource owned at the present moment by private title and the courts determining that the title is absolute; having been given without any reference to revocation and without any limit it is in perpetuity. If that individual can thus hold a natural resource, and the resource is so essential that man cannot live without it, then the man's title to that natural resource may be used to take away the natural right of freedom. That would be slavery.

Yes, this is a vital question; the objection to the resolution often urged is that power if delegated may be used harmfully. Granted; but on the other side is the possible good. If you assume that good is liable to come uppermost, if you assume that 90 per cent of the people are liable to be good, then you must assume that in the natural order of things the Legislature will legislate for good and not for evil. I am an individualist, the very strongest. I believe in that government which governs the least and just enough to restrain the few from injuring the many.

Mr. Dutch of Winchester: I am glad the previous speaker said he was not a State Socialist, because I should not have reached that conclusion from his remarks. I believe the issue presented by this resolution in its present form is not whether we are in favor of conservation of natural resources or whether we are not in favor of the conservation of natural resources. This resolution spells down to this: Are we in favor of putting into the Constitution this declaration authorizing State ownership and operation of not merely mines if we have them, water-powers if we have them, but of the timber or lumber industry of the State, the wood industry of the State, and the farming of the State? That is the issue, — State ownership and operation of those. Last fall, at the eleventh hour, this Convention hesitated and declined to pass on to the people a proposition for the State to engage in industries, even in connection with the necessities of life, except in times of emergency. It has been pointed out that there are no such limitations to this proposition. I simply wish to make clear that what has been thrust upon us, so that we are compelled to face it in our votes, is that if we vote for this it is for a declaration authorizing State ownership and operation of these industries. I for one cannot go that distance.

Mr. HARRIMAN of New Bedford: That the old order is changing must be apparent to the most casual observer, and that the spirit of humanity is abroad in the land is also apparent. Statesmanship is leaving the realm of both National and State party politics and is going into the realm of the reconstruction of our social system. It is the issue that is here to-day before this Convention, and every act of the Legislature which seeks to limit in any way private industry or its work is an invasion upon the established order that has protected private property. The budget of England in 1909 was the greatest blow that ever has been received by the landed aristocracy, and the echo of that budget is heard here to-day in this Convention. All the laws of America which take over the oversight of private business are intrusions into the regions heretofore forbidden in State or Nation. We have to face this condition, and this resolution brings a clear cut issue in this Convention. I welcome it because it is the only issue, whether or not private interest shall be allowed to be paramount above the welfare of the great mass of our people. Private industry and ownership were necessary at one time, and it is necessary to-day within certain well-defined limits, but I submit, sir, to this Convention, with the great mass of our people being driven from the farm into manufacturing, and with the harder days for the farmer, that farmers ought to realize, and we who are not farmers ought to realize, that we live by them. Burn our cities, and they grow like magic; burn our farms, and grass will grow in the streets of our cities. It is absolutely necessary, sir, that the farm should be taken care of, and I can conceive of a time when it will be necessary for the welfare of this Commonwealth, and it will be absolutely necessary for the various communities, for the State to help finance the farmer. I believe that this broad principle should be placed in our Constitution, and allow the people of the future untrammelled to deal with conditions that arise. For that reason I do not believe that there is any use in delegating anything that you cannot use, and for that reason I am opposed to having the word "utilization" taken from this amendment and trust that the amendment will be passed as reported by the committee.

Mr. DRESSER of Worcester. The delegate in charge of this measure (Mr. Hobbs) agrees, as I think we all do, that there is only one clause in it which is of any account, and that is the very first one: "The conservation, development and utilization of the agricultural resources are public uses." All the rest might be stricken out. That declaration of public use opens those properties to what from time to time may be thought wise by the Legislature, to limitless regulation, to limitless exercise of the power of eminent domain. If I may state the nub of the proposition, by way of illustration perhaps, suppose this: The Lord did place the land here, and our grandfathers came and grubbed out the stumps, tilled it and passed it on, developing it until to-day somebody has his farm or his water-power. His farm as a piece of arable land is an agricultural resource; it is not, in my opinion, a natural resource. The resolution as reported you will notice simply says "agricultural resources", so that the farm that has been made and developed by the sweat and toil of generations is now declared in its present state of development and in its present utilization to be a public use. When you say that that is a public use any regulation

is possible. The price of milk may be fixed. Take something which perhaps has analogy to water-power. The agricultural commission or what not will say to the owner: "If you will fertilize your land a little more heavily you will increase your crop, and you must do it." The man says: "I have been all through that. I know that for the additional fertilizer that I put on that land I cannot get enough crops in addition to pay the cost of it, therefore it is uneconomical." To which under this resolution the commission may answer: "Very true, sir, you may not be able to pay the cost, but you will raise more crops for the community and you must do it." That is precisely the situation with the waste water which we hear talk about going over our mill-dam. Lately the city engineer of Worcester was asked whether it was not possible to utilize the flood water of our storage reservoirs in the spring in some way, and in a very recent report he said that that was entirely impracticable. Under this resolution, whether it be a municipal supply or a private supply, the Commission on Waterways may say: "You shall raise your dam and save that flood water. I know you, Mill Owner, cannot use it, but it will help all the stream from Massachusetts to the Sound." Now, that is a very wide principle. I have every sympathy with the attempt and the desire to conserve or develop our waste lands and our undeveloped water resources, a desire to such an extent that so far as I have been able I have tried to draft a resolution which would accomplish that and nothing else. I have not been able to do it. I have asked various people to help me, and they do not seem to be able to do it.

Mr. WASHBURN of Middleborough: It may be worth while to take the time of the Convention to make just a single point, and a single point only. The words "by purchase or otherwise", as the gentleman from Beverly (Mr. Loring) has said, are not constitutional words; they are statutory words, and have been so employed. I have not been able to find a single instance of the constitutional use of such language. It may be true that the phrase "by purchase or otherwise" has been construed; I do not find it has been. Of course the word "purchase" has been construed. Now, what is the constitutional language? Is it "eminent domain" or "just compensation"? Eminent domain to a limited extent, yes, but the usual language employed in most State Constitutions is "just compensation." This phrase is employed in thirty-seven State Constitutions that I have been able to examine. To give one or two illustrations: New York, Article I, section 6, provides that "No person shall be deprived of life, liberty or property without due process of law, nor shall private property be taken for public use without just compensation." Maine, Article I, section 121: "Private property shall not be taken for public uses without just compensation." Connecticut, Article I, section 11: "The property of no person shall be taken for public use without just compensation therefor." Pennsylvania, Article I, section 10: "Nor shall private property be taken or applied to public use without security of law and without just compensation being first made or secured." Not to go further, I say then, that that is the usual language. Georgia and Louisiana employ the phrase "just and adequate compensation", Texas employs "adequate compensation", and Massachusetts, as we have been told this morning, "reasonable compensation". The phrase "just compensation" has been construed in a number of States, its meaning is per-

fectly obvious and well understood, and I think the recommendation of the committee should be followed.

Mr. PILLSBURY of Wellesley: I share the feeling so forcibly expressed a moment ago by my friend from Topsfield (Mr. Wellman), and I am entirely in accord with my friend from Winchester in this division (Mr. Dutch) and like him could not support the resolution in its present form; but the possible importance of it cannot be overestimated, and I think it has a feature which we may well preserve if we can preserve it without the rest. There are cases in which the State may intervene for the conservation and development of natural resources, and by the exercise of its sovereign power bring about results which are not likely to be and perhaps cannot be accomplished by private enterprise. To that extent I favor the resolution; but when you go so far, as the resolution goes, and put into the hands of the State the power of utilization and control of all our natural resources, which means that the State may set aside private enterprise and go into trade or production to any extent whatever, there I draw the line, and unless the resolution is amended in the manner proposed by my friend from Lexington (Mr. Clapp) I cannot support it. With that amendment, I am willing that it should be extended to all natural resources, as proposed by my friend from Beverly (Mr. Loring).

Mr. CLAPP of Lexington: Of course there is no time for debate, and I have nothing that I wish to add; I had my say yesterday. I rise simply to say that I am in favor of both of the amendments proposed by the delegate from Beverly (Mr. Loring), and expect to vote for them. As to the elimination of the word "proper", as suggested by the delegate from Boston in the second division (Mr. William S. Kinney), it seems to me well enough to do that. I hope that all other amendments, excepting my own, will be defeated.

Mr. CLARK of Brockton: I do not wish to discuss this matter, but I should like to inquire of the gentleman in this division who has just taken his seat (Mr. Clapp of Lexington), if he believes it would be wise to authorize the Legislature to provide for the development of natural resources and expend an unlimited amount of money in doing so, and then prohibit the Commonwealth from utilizing them and allow that money to lie idle.

Mr. Hobbs of Worcester: The discussion seems to be mainly upon the point whether we shall include utilization or shall not include utilization. That seems to be the great point of separation of the two opposing sides. It is true that if the resolution goes in with that out, still something will have been accomplished; at the same time, I feel that it would be a serious limitation on the effectiveness of this proposition. In the formulation of the original Constitution, in defining the power of the State to take land the only limitation that I know of was that it should be for a public use. No definition was made of that term. The only limitations are such as the courts have conceived were in the minds of the framers of our Constitution when they used that word. In other words, our forefathers left that matter flatly and plainly before the Legislature with full powers to act, subject only to an indefinite and unnamed restraint reposed in the hands of the courts. No great mischief has resulted from that. I think that the likelihood of any serious mischief resulting from the granting

of the broad power would be infinitesimal beside the chance of damage which we might do by holding the Legislature down to too strict rules.

The gentleman from Topsfield (Mr. Wellman) has utilized one argument that I think ought to receive some consideration. He has attempted to damn this proposition by stating that it was one of the devices of the tyrannical powers across the water. It is an easy way to cry down a proposition by referring to Prussianism. Possibly the gentleman from Topsfield (Mr. Wellman) thinks that we have arrived at the point where we can disdain our opponents. It would seem to me to be profitable for us to consider this: That until we have arrived at that point it might be rather desirable to consider as to whether they have not a few leaves in their book that we could profitably inspect, and as to whether it would not be advisable to copy so much of their methods as would enable us to prepare for the future a development of the resources of our Commonwealth that will be efficient and enable us to bring to bear at the moment of danger the full resources of the Commonwealth. It seems to me that this is a proposition that the Convention might well consider.

The amendment moved by Mr. Clapp of Lexington was rejected, by a call of the yeas and nays, by a vote of 79 to 106.

Action on the remaining amendments was deferred until after the recess.

The two amendments moved by Mr. Loring of Beverly were severally adopted and the amendment moved by Mr. Mancovitz of Boston was rejected.

The amendment moved by Mr. Richardson of Newton was withdrawn.

The amendment moved by Mr. William S. Kinney of Boston and that moved by Mr. Broderick of Waltham were severally rejected.

The resolution (No. 379), as amended, was passed to be engrossed Thursday, July 25, by a call of the yeas and nays, by a vote of 127 to 74, in the following form:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment.

The conservation, development and utilization of the agricultural, mineral, forest, water and other natural resources of the Commonwealth are public uses, and the General Court shall have power to provide for the taking, upon payment of just compensation therefor, of lands and easements or interests therein, including water and mineral rights, for the purpose of securing and promoting the proper conservation, development, utilization and control thereof and to enact legislation necessary or expedient therefor.

The resolution was considered Wednesday, August 7, for submission to the people.

Mr. PILLSBURY of Wellesley: I have expressed my opinion of this resolution at a former stage, and do not suppose it will be of the slightest effect to repeat it, or to add anything to what I have said before, but I feel constrained to remind the Convention, now that we are beyond the amending stage and the resolution is liable to be submitted to the people, that it is probably the most extensive and mischievous piece of State socialism which has passed the Convention. If it had been confined, as the minority tried to confine it, to conservation and development, bringing in the power of the State for that purpose, which at times may advantageously be exercised when private enterprise or private power is insufficient, there would have

been no substantial division of opinion. In the form in which its promoters insisted upon keeping it, it may be held to authorize the State not only to conserve and develop the power of the streams, for example, but to own and run every factory upon their banks. In this form the resolution ought to be rejected.

Mr. DRESSER of Worcester: I trust that the Convention will pause before passing this resolution further. I have tried to call to the attention of the Convention somewhat of the legal effect of it. I want for a moment to restate that. This resolution declares that the use or utilization of agricultural, or water, or forest, or other natural resources, is a public use. It is left to the law-making body to determine what the public use is, without any supervision or passing upon the question by the court. I am not aware at the moment that there is any other similar provision in the Constitution. Now, that means this: That any person who owns a farm, who owns a wood-lot, who owns a watercourse, becomes, if I may use the expression, a little public service corporation. He is utilizing a thing which is declared by the Constitution to be a public use. Private ownership of farm lands, of watercourses, of forests, is in effect swept away by this resolution. It is not merely a question of the taking of the property by the State. Of course, being a public use, by the words of the resolution itself it may be taken by the State, but it is taken upon compensation and the man is presumably as well off. It is not, therefore, the question of taking that is important, it is the question of use and of regulation and of direction.

I quite agree with what the gentleman in charge of this measure has said, that we need not fear that the Legislature next year or five years from now is going to disrupt all our farming or woodland or water-power interests. That is not likely, although things move very rapidly these days. He says they never will do it, but "never" is a long word. We cannot tell. Never! Well, in the words of the song of our youth: "What, never?" "Well, hardly ever." They "hardly ever" will do it, but every once in a little while they will, and what can be done? Under this resolution it is possible to direct that a mill-wheel shall operate so many hours, that water shall be let down or held back, that every man shall keep so many cattle on his farm, that the price of his products shall be fixed, that, as we have seen in the regulations of street railways, of railroads, of water companies, of light companies, everything which is conducting a public use, all sorts of regulations can be applied little by little here. Now, that is a very far-reaching thing. There is only one place in the world where this theory, which is a pure socialistic theory, is in practice. It is to-day in practice in Russia, where the farm lands, the forest lands and the industries are taken over. That has been done in Russia by force and by blood, — a revolution of force. The same thing can be done in the Commonwealth of Massachusetts when this resolution is passed, but it will be done here not by force or by blood but under the sanctity and the shield of our Constitution, which adopts in this resolution precisely the same theory that we see in practice there.

You may say this is silly. Perhaps it is silly. It is a question of principle, whether or not that shall be done, whether we shall sit here and in this Convention to-day work the greatest social revolution which has happened in the Commonwealth. I do not think I talk

wildly about it, sir; I mean precisely what I say. A little thought will bring out to every one's mind these facts. It is unnecessary to pile up instances. There are many who say: "Why, we want to get at somebody who has grasped under the force of our laws things which ought to be left for the people at large." That is a perfectly understandable thing. But when you grab at that you grab at the land of the little Polander who bought a little waste land a year ago and has started to develop it. He comes under the same rules and under the same laws. If in this resolution the purpose is to reach the rich or those who have acquired property by their efforts and their toil through generations, remember that at the same time there are those who have little property, little farms or watercourses, that are subject to the same rule. Now, we do not want to do that. It is certain that we do not want to do that. What we do want to do is to conserve and develop the waste things, the things that are impracticable now to develop without aid or without power. That is what actuates that desire, actuates many who have voted for this resolution.

Mr. CREAMER of Lynn: I should like to ask the delegate from Worcester (Mr. Dresser) if he contends that the surplus development and utilization of the surplus agricultural, mineral, forest and water resources of the Commonwealth are proper uses.

Mr. DRESSER: I contend this, and perhaps I can state it best by an illustration: When there was granted to our forebears the waste land of the Commonwealth, that the Lord had placed here and that the hand of man had not touched, and when through generation after generation by toil, labor and money the forests were cut down and the fields were made capable of yielding produce, the result belongs to the individual; and if it does not belong to the individual, there we have a socialistic State.

Mr. CREAMER: I should like to ask the delegate if he cannot differentiate between the natural resources and their value from a location standpoint in their crude and undeveloped state and those improvements that have been made by generations of mankind. As I understand it, this resolution applies only and is applicable only to the *natural* resources, not the value that may be in those resources that has been produced by the individual who happens to possess them.

Mr. DRESSER: I am obliged to the delegate for that question, because it raises the great doubt: when is a natural resource not a natural resource, if ever? Is the land which is waste, a natural resource? Yes. As it is developed does it still remain a natural resource? None of us can tell. The courts will have to decide that some time. If there is a point in the development of the land or in the development of the watercourse where it is said that the natural resource has become something else, let me suggest this. For illustration, iron in the ground is a natural resource, but when it is made into steel it is not. Water running in the streams is a natural resource, but when a dam is put across and a new thing is created, — water-power, — is that a natural resource? If it is not, when does the change come? When does the change come? Now, that is a serious doubt, and it is my fear that it is impossible from the course of this debate, which perhaps will have to be looked at when the question is passed upon, to determine what we meant when we added "and other

natural resources". There were two arguments. There was the argument which was urged that we wanted to confine the resolution to resources in the state of nature. There was the argument that "other natural resources" must be put in to take care of the possible use of the tide, or of the sunlight, or of peat, or of other things that were not here. That is a serious question, which no one, I think, can possibly answer. But there is the effect of the resolution, unless that line shall be laid down, and if it is laid down the purpose which many people have in their minds, of getting at the development of a certain thing, is lost.

Now, I wish to ask, sir, the favor of the Convention for this. We ought to bring out distinctly the two issues. I think it is possible to provide for the use or development of natural resources and leave out the doubtful question. If the Convention permits I wish to offer as a substitute for this resolution the following phrase, to be placed in the section of the Constitution which in this little black book is found on page 61 (Part II, Chapter V, section 2), and which outlines the desires and policies of the Commonwealth. I want to put in this phrase: "to foster the development and use of the waste or undeveloped natural resources of the Commonwealth." This is an important measure, sir, and I feel that we ought not lightly to let the debate pass. I ask consent of the Convention to offer this amendment:

Strike out the article of amendment, and insert in place thereof the following:

Section II of chapter V of part the second of the Constitution is hereby amended by inserting before the words "to countenance and inculcate the principles of humanity" the words "to foster the development and use of the waste or undeveloped natural resources of the Commonwealth;"

so as to read: —

Wisdom and knowledge, as well as virtue, diffused generally among the body of the people, being necessary for the preservation of their rights and liberties; and as these depend on spreading the opportunities and advantages of education in the various parts of the country, and among the different orders of the people, it shall be the duty of Legislatures and magistrates, in all future periods of this Commonwealth, to cherish the interests of literature and the sciences, and all seminaries of them; especially the university at Cambridge, public schools and grammar schools in towns; to encourage private societies and public institutions, rewards and immunities, for the promotion of agriculture, arts, sciences, commerce, trades, manufactures, and a natural history of the country; to foster the development and use of the waste or undeveloped natural resources of the Commonwealth; to countenance and inculcate the principles of humanity and general benevolence, public and private charity, industry and frugality, honesty and punctuality in their dealings; sincerity, good humor, and all social affections, and generous sentiments, among the people.

By a vote of 114 to 91 (less than two-thirds having voted in the affirmative), the Convention refused to suspend the rule so that the amendment might be considered.

Mr. Pillsbury of Wellesley: I move to suspend the rule which forbids the introduction of amendments at this stage, and if necessary, though I do not understand that it is, I ask unanimous consent to make the motion, and to make a brief statement in explanation.

I think there is some reason to suppose that the Convention refused to suspend the rule for the introduction of the amendment proposed by my friend from Worcester in the view that it would work so radical a change in the resolution as practically to nullify it, so that a vote to suspend the rule or to adopt that amendment would practically be

the effacement of the resolution. Now I should like to test the temper of the Convention on an amendment of a less radical character. Inflexibly opposed as I am to the resolution in its present form, I am entirely content to see the State vested with power to conserve and develop, but not to use and control, our natural resources; and I move an amendment to carry that view into effect, striking out the word "utilization" in the first line of the resolution and the words "utilization and control" in the 8th and 9th lines, and making the necessary verbal change of inserting the word "and" before the word "develop" in each case.

Mr. CREED of Boston: I should like to ask the gentleman from Wellesley if his amendment is not in fact the one that the delegate from Lexington (Mr. Clapp) proposed and argued for so ably and so completely in the debate on the early stages of this resolution.

Mr. PILLSBURY: My recollection does not enable me to answer the question categorically, but I think it quite possible that it is so.

Mr. ADAMS of Quincy: In the absence of or lack of memory of my friend in the first division (Mr. Pillsbury) I think I can answer his question. I think the amendment which he proposes is practically identical with the one which the Convention debated at great length. I think that the amendment which he proposes, if not in words, is in substance precisely the same as the proposition which was urged upon this Convention from the beginning of this controversy. I think that it is the standing proposition which he has had before this Convention and which the Convention has debated with great elaboration and after long debate has defeated. That is to say, it is the refusal of this Convention to recognize the proposition that the Convention should overrule the proposition laid down by the Supreme Judicial Court in the Woodyard Case (Opinion of Justices, 155 Mass. 598). That is the substance of the conflict. And if there is anything which we have had a long and exhaustive debate on, it is that proposition, — that proposition which has been decided decisively by the votes of this Convention.

Mr. QUINCY of Boston: Without saying a word about the merits of this amendment as it stands, I think I may properly suggest to the gentleman from Wellesley that he is asking to have a regular standing rule of procedure of this Convention, a rule which he took a large part in framing, suspended in this particular case. I do not think he has given any reason to the Convention why we should adopt an extraordinary method of procedure in this case and throw open this particular amendment to amendments on this its last stage when the rules provide otherwise. I wish that the gentleman from Wellesley could offer to the Convention, if he is able to do so, any good reason why we should depart in this case from the procedure prescribed by our rules, which he had as large a hand as anybody in reporting, unless we are to throw the door wide open and suspend the rules in all cases in order that we may redebate and further amend measures which we thought we had brought down to the point of a final vote.

Mr. HARRIMAN of New Bedford: Without discussing the merits of the document itself I want to call the attention of the Convention to the matter that has just been disposed of, the proposition of providing homesteads for citizens. That was killed by indirection, and the action of this Convention a few moments ago in refusing to suspend

the rule I think was well taken, and I believe that we should adhere to that particular principle. I cannot divorce myself from the idea that the attempt to amend this measure is an attempt to defeat it in its final passage in this Convention.

Mr. Hobbs of Worcester: The question before the Convention is a general suspension of the rule. It is not a suspension of the rule upon a single amendment. If adopted this throws the whole matter open again as it has been hitherto on two debatable stages, to any amendments whatsoever. It seems to me that that is a bad policy to establish at this time. It seems to me that we have had enough of discussion of details and of the paring of words upon this question, that it is about time we made up our minds as to whether we want this or not and came down to a fair and square vote upon the proposition. If the vote upon the last proposition, which was about as ridiculous a piece of emasculation as has been attempted in this Convention, is any indication, there is a strong opposition to this measure. It has been thoroughly lined up, the stage is entirely set and I would beg the Convention, if such be their mind, that they proceed to the major operation rather than tarry upon minor details. It seems to me that any subterfuge such as was moved by my colleague from Worcester (Mr. Dresser), any tucking this away under the guise of an "encouragement of literature, and so forth" [laughter], is something that we might well omit and that we might proceed to a fair and square vote upon the main issue. [Applause.]

Mr. Lummus of Lynn: I do not understand this amendment to be a scheme to defeat the resolution by subterfuge. On the contrary, I submit to the Convention that some such amendment is necessary to save the parts of this resolution that are really needed by the Commonwealth. There is, I think, a strong feeling here that some right in the Legislature to provide for the development of our natural resources is necessary, but I think there is fully as strong a sentiment in this Convention that we do not wish to embark in a career of State socialism and that the whole measure is very likely to fail unless some reasonable amendment is made that will obviate some of its obvious dangers. Therefore I think some such amendment is necessary to save for the Commonwealth the power that it ought to have to deal with the development of its natural resources. It is much more important, I submit, that we make no mistake upon this very important matter, than that the technicalities of parliamentary procedure be observed.

Mr. Edwin U. Curtis of Boston: I agree with the gentleman from Worcester. I have been opposed to this amendment ever since it was offered by the former United States Attorney (Mr. Anderson of Brookline); and ever since he has deserted it and passed the baby over to my friend from Worcester, I still have been opposed to it. I hope we shall vote now not to suspend any rule or to put on any more amendments, but let us go to vote on the main question. We have heard it long enough, we all know what it is, we all are ready to vote. [Applause.]

The Convention refused to suspend the rule.

Mr. Luce of Waltham: I conceive that in creating this Convention a majority of the people of the Commonwealth, as far as the ballot showed, expressed a desire that there should be improvement in our

system of government. We have voted to submit to the people a method for exercising legislative power and amending the Constitution which is known as the initiative and the referendum. Gentlemen are aware, I think, that in my own judgment this is a clumsy and imperfect device to accomplish ends that can be secured better in some other way, and, so believing, I voted last year against the initiative and referendum. But, sir, may I call the attention of the Convention to the fact that this fall the people of the Commonwealth are to say whether they desire to have at their command the initiative and referendum with which to supplant the Legislature whenever that may suit their wish? And there are gentlemen within the sound of my voice who are very anxious that the people shall not declare in behalf of this new method. Sir, every day here I see from one to ten thousand votes added to the support for the initiative and referendum. [Applause.] I saw five thousand votes added when this Convention refused to take the word "proportional" out of the Constitution. [Applause.] I know of men of substance and standing and conservatism who since the rejection of that proposal by the Convention have said deliberately and publicly that they are glad to have the opportunity to vote for a device with which they can overrule the judgment of this Convention. And I warn my fellow-delegates that those of them who adhere to their purpose to set a stony face against all improvement and progress, are but inviting destruction. "Whom the gods would destroy, they first make mad." [Applause.] Sir, the people of this Commonwealth do not want State socialism. The people of this Commonwealth do not desire to see the hobgoblins that are conjured up in the brains of my reactionary friends, established in this State House. The people here do not desire the Bolsheviki of Russia, but the people do desire that moderate, reasonable steps shall be taken to increase the happiness of the people in ways from which they are now precluded by the interpretation put upon their Constitution.

Our forefathers, — and I am not ashamed to invoke their wisdom, — our forefathers said that they would give "full power and authority" to the General Court "to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions". Will any man here stand and say that in the one hundred and thirty-eight years during which the people have had the power to do those things through the Legislature, they have been unmindful of the common welfare? Will any man here stand and say he so mistrusts representative government that he dares not let the people, acting through their representatives, do such things? I do not plead for any of the excesses that have been pointed out as possible under the proposed extension of power. Were I in the Legislature I would hold up both hands in protest against such excesses. But shall I be terrified and be scared out of deliberate, reasonable and prudent action, because, forsooth, a coming Legislature may do something that all the Legislatures of the past never dreamed of doing?

Let me give you a concrete illustration. England, which has had the foresight to see that the war will end, already has established a Ministry of Reconstruction. The other day I read a report filed by that Ministry, signed by Haldane, pointing out to Parliament and the King that by the establishment of central power stations, twelve or

fifteen in number, scattered over England, it would be possible to an almost incredible degree to reduce the waste of the present system under which coal is burned beneath a hundred thousand boilers. These men of England have vision; they see what is coming. Cannot you open your eyes to the future? Cannot you see that to meet competition we may have to do precisely the thing that England proposes to do? Cannot you see that we may want to harness our rivers more effectively, may want to establish central stations to distribute power just as Haldane and the Ministry of Reconstruction advise in England? Will you turn your face against opportunity? Will you say the doors shall be closed and double fastened so that our successors cannot save themselves?

Gentlemen here too often, in my opinion, conceive that they are a Legislature. They fasten their eyes upon the merits of this or that specific course of action which has been held up to them as a possibility under a general power proposed, and fearing this or that thing, knowing if they were to vote on this or that law, their inclination before hearing the argument would decide them against it, they say: "Power shall not be granted even to consider such a course." Sir, I ask the gentlemen to face seriously this question of whether they are answering the people of the Commonwealth in fairness, in justice, in equity, when they say: "You shall not even discuss the wisdom of this or that policy."

I ask my friends who are young in public life to look toward the future. Let them remember what one of the greatest statesmen the world ever saw, Edmund Burke, told his countrymen was the rule that should guide the course of legislators and statesmen: "Timely concession is wise statesmanship." Timely concession is wise statesmanship; and a timely concession to the demands of the people may save us from evils with which we are threatened, may postpone to distant generations the day when a reign of Bolsheviki can here arise; the timely concession that shall allow ourselves through our chosen system of government to do that which we think for the best interests of the people, which shall allow our successors and all future generations as long as this Constitution shall stand, to follow their own judgments as to what is wisdom and what is virtue. [Prolonged applause.]

Mr. CHOATE of Southborough: The remarks of the last speaker, brilliant and persuasive as they are, are not of a character to enlighten the judgment of this Convention, but rather to obscure the exercise of that judgment in its soundest way. We ought not to be frightened or intimidated into any action that our cool, deliberate common sense does not support. We ought not to be led into following any course by mere generalities. We ought not to be induced to pass a resolution by any vision of votes that may be cast upon one side or the other. I rejoice in the knowledge that my distinguished friend who has just spoken is a candidate for a very high office, and I pardon him when I know that he is indulging in these happy visions of votes in such tremendous blocks and I hope those hopes will be fully realized. But I doubt if those votes that he pictures are arguments that ought to sway us here. This resolution is not any glittering generality; it is a concrete proposition and to know whether it is wise to adopt it it must be analyzed. I ask your patience for a moment in that analysis.

When the proposition that is now embodied in this resolution was first presented to the Convention by its original mover the thought that was in his mind and the thought that was presented to the Convention, I submit, was this: That it was wise to empower the Commonwealth, — the Commonwealth, mark you, — to develop her own natural resources herself and to prevent their exploitation by any private interests. That was the one simple proposition that was advanced by the original mover of this resolution and which attracted the approval of the Convention in its original form. That is, that the Commonwealth should have the power to develop her own resources and that those resources should not be permitted, contrary to the wishes of the people, to fall into the hands of private individuals for private gain.

That is not the resolution that is before the Convention. This resolution, which many of you may believe is a resolution to bring about that result, is a resolution which is masquerading, I submit, under entirely false colors.

Now pause a moment and see what is the language of this resolution. Does it mean that the Commonwealth is to have power to develop her water-powers, that as her water-powers are limited and some of them are in private control the Commonwealth may take those water-powers and develop them for the benefit of all the people? Not at all. It means this: It means that the Commonwealth may erect private corporations to which it may give the power of eminent domain to bring about the very result you have sought in the thought that has been in your minds to prevent.

Read the language of this resolution again before you vote on it. You recognize to-day that the power of eminent domain is delegated by the Legislature to private corporations. How are your railroads built except by the delegated power of eminent domain, the power that belongs to the Commonwealth, to the people, and which is given to the railroads? Is not that true? How are your water companies erected? Is it not by the same delegated power of eminent domain? That is the very danger that is contained in this resolution, — that it does not aim at the Commonwealth developing its own natural resources, but it aims at permitting the Commonwealth to delegate to private corporations the right to do the very thing we do not want them to do, — that is, to exploit for their own benefit the natural resources of the Commonwealth.

Is not that exactly what will follow if you give to the Legislature the powers in this general and loose language which this resolution contains, — that immediately there will spring up applicants for the passage of either general or special laws to build a water-power here, to develop a forest proposition there and to be given the right to take other men's land and other men's property under the guise of devoting it to a public use? Is that what this Convention wants to accomplish? I submit it is not.

Mr. BENNETT of Saugus: Does not the power which is given in this amendment here exist already in many or most of the States of the Union, and has it not been the basis of the upbuilding of their agriculture and industry?

Mr. CHOATE: I am unable to answer that question from any research that I have made myself.

Mr. DRESSER of Worcester: I understand that there is some such constitutional provision written into the Constitution of Idaho lately, and in no other State.

Mr. BENNETT: Let me ask the gentleman this direct question: Is there not such authority as this in the Constitution of Indiana, and has it not been the cause of the change of Indiana from a morass in many places to the richest agricultural land in the world? I ask the gentleman to answer that question.

Mr. DRESSER: I recall there is no such constitutional provision.

Mr. CHOATE: I am not now contending against the wisdom of allowing the Commonwealth to develop her own natural resources. I think there is much to be said on both sides of that question. If, for instance, the natural resource which is the subject of such proposed development be a water-power, of which in the very nature of things the possibilities are limited and restricted, it may be a very wise thing for the Commonwealth to exercise that power. If, on the other hand, it be the development of agriculture, I think the proposition stands on quite a different basis. In the first place, it is not a thing which the Commonwealth alone can do successfully. It is not a thing which can be done advantageously for the benefit of all the people. Take a single illustration, if you please. How would it be feasible for the Commonwealth to go into the business of agriculture? Would it not inevitably follow that she would be brought immediately in competition with all those men who make their living through farming, and would it not inevitably follow from all the experience that we have had that, inasmuch as the question of cost rarely enters into any public undertaking, we would find the Commonwealth, with its immense resources and the possibility that the right side of the balance sheet would not be a fundamental point, — find the Commonwealth brought into competition with all those men who have to do that business for their living? Whether it would be expedient to engage in such a public development might be a very grave question.

Mr. DONOVAN of Springfield: I should like to ask the gentleman if his objection to this amendment is based upon his interpretation of the amendment as being such that it would provide for private corporations to control natural resources, and is not that inconsistent with the position taken by the gentleman from Wellesley (Mr. Pillsbury) and the gentleman from Worcester (Mr. Dresser) who held that it would be in the line of State socialism? In other words, the gentleman who is speaking opposes this because it is not State socialism, while the other gentlemen oppose it because it is State socialism.

Mr. CHOATE: I base my objection upon two grounds, one which the gentleman from Springfield has just voiced and which I think is an additional and it seems to me a more serious objection than that which has been urged by the gentleman from Wellesley or the gentleman from Worcester. In the second place, I base my objection to the resolution upon the vague, loose, uncertain language of the resolution. What is meant by "the other natural resources"? Who is going to decide what are the other natural resources of the Commonwealth? Of course the courts will be called upon to do so. We shall have a long line of judicial decisions somehow or other in the long run marking what are and what are not natural resources. Certain things, one would say, would come pretty plainly within the comprehensive phrase

"other natural resources". The fisheries, for instance, would they not? The granite quarries, would they not? Take, for instance, such industries as the brick making industry, the whole material used for it is derived from the soil, the clay banks. Are not those natural resources? Shall the Commonwealth either itself engage in that business, or is it wise to give the Legislature the right to erect private corporations with the power to take a desirable piece of land and carry on that industry away from that citizen if they want it? That is what seems to me to be the vicious part of this resolution, that it gives the opportunity to the rich and the covetous man. I think the danger is greater upon that side than it is upon the side of State socialism.

Mr. DONOVAN: I should like to ask the gentleman if he realizes that the two points of view are contradictory, that to give the power to private corporations to exploit natural resources would be the direct opposite of State socialism and that the two fears cannot coexist, it seems to me.

Mr. CHOATE: It does not seem to me that the two ideas are inconsistent. I think they may both exist, and exist at the same time and be subjects of danger to the people at the same time. It is perfectly possible for the Commonwealth to engage in activities with reference to a certain portion of this field and to delegate the power to engage in activity as to other portions of that field to private individuals. As, for instance, it is perfectly conceivable that the Commonwealth might go into the development of water-power. It is perfectly conceivable that under this resolution the Legislature might delegate to private corporations the right to engage in forestry and to take over tracts of forest lands which had been developed by individuals or to take over tracts of farm land which had been developed by individuals and to allow those corporations to go into competition with other individuals, only with the tremendous added advantage of possessing the power of eminent domain. It seems to me that power is vastly too great to be entrusted under the conditions that are contemplated here out of the hands of the Commonwealth.

Mr. CREAMER of Lynn: I should like to ask the delegate from Southborough if he does not think his argument implies a profound distrust of the General Court.

Mr. CHOATE: It does not seem to me that it discloses a profound distrust of the General Court. The resolution, if it is approved by this Convention and submitted to the people, is not only an invitation but a direction to the General Court to do what the resolution contemplates. The risk of the step proposed to be taken is ours. If we take the step they certainly are justified in going further.

Mr. CREAMER: I should like to suggest to the delegate from Southborough that his argument presupposes that whatever action might be taken by the General Court would be an extreme action. In other words, in one case he presupposes that it might degenerate into State socialism, and in the other case he presupposes that the General Court might give away the property of the Commonwealth or the property of the individual to selfish interests of some kind.

Mr. CHOATE: The latter proposition that is submitted by the gentleman from Lynn is perfectly clear and perfectly obvious, that it will

permit the Legislature to delegate its own sacred power of eminent domain to private corporations, — with what success cannot be foretold.

Now let me ask your patience for just a moment to a scrutiny of the language of this resolution. I have said that this language was vague and nebulous and uncertain, and I repeat it and ask you to look at it again to see if I am not right. What is meant and intended, what can be meant and intended, by the word "utilization"? Does it mean, as has been argued here, that the Commonwealth may dictate the method of use by another of his own property without taking it away from him? That is what has been suggested here. Do you wish that? I submit that you do not wish that. I submit that is not within the four corners of the proposition that as a general thing you have shown your approval of at all. Am I not right in saying that the proposition that you gentlemen heretofore have given your approval of has been that simple proposition that the Commonwealth should have the right to exploit its own resources and that you did not expect to go beyond that? I am not arguing against that; I am only pointing out to you that it must be plain upon a careful reading of this resolution that that is not what the resolution means and what it will accomplish, but it will accomplish a great deal more than that and a thing which is entirely inconsistent with that and will accomplish a result which may be full of danger, may bring about the exact reverse of the thing which I believe it is that this Convention wishes to do. [Applause.]

Mr. William S. Kinney of Boston: The real issue that is at stake here has not been mentioned this morning. The developments in an economic way, particularly since the outbreak of the war, have brought the people of Massachusetts and of all New England to a realizing sense of their dependence upon other sections of the country for fuel and light and power. The people of New England last year went through a winter during which they suffered privation on that account. This led to a study of conditions in New England in order to determine whether or not we have at hand the means of supplying these needs and relieving us of this dependency upon other sections of the country, at least to some extent. The direction of that inquiry finally turned to the water-powers of Massachusetts. Modern invention has developed the hydro-electric plant to a point where if properly utilized power, light and heat can be developed now by the use of the natural water flow of the country. The last Legislature created a special commission which is sitting this summer to investigate that subject.

Now what did they find to be the situation with reference to the water-powers of Massachusetts? The bugbear raised by the gentleman from Southborough is not something that may happen if this Convention passes this resolution; it is something that *already has happened* and is now a fact in this Commonwealth. That is this: There are a limited number of streams and river courses in Massachusetts whose flow is such as to make it wise to use the flow for the purpose which I have indicated. Those river courses already are dominated by and already are in the control of private corporations erected by the Legislature to exploit the water-powers of Massachusetts. We need not raise that bugbear as something to deter us from

action, because that is the situation which exists to-day in Massachusetts, and in order, sir, that the people of Massachusetts, that the Legislature of Massachusetts, may have an opportunity to redeem and to reclaim the power to further develop those watercourses which already are in a state of partial development by private capital, this resolution is necessary.

Mr. RICHARDSON of Newton: I should like to ask the gentleman whether or not it is within his knowledge that the passage of this resolution or amendment is being favored if not actually sought by one or more of the great power companies which at present are operating in this Commonwealth.

Mr. KINNEY: It is not within my knowledge. At recent hearings the representatives of practically every water-power in the Commonwealth have been present and the one fear they express is that the State contemplates the actual taking of their property. As I understand the position of the water-power companies of the Commonwealth, the legal representatives of some of which companies are members of this Convention, they do not object to a development, as the gentleman from Worcester (Mr. Dresser) put it, of such watercourses as have not already been developed by private capital. In other words, they fear perhaps that the Commonwealth is about to make a taking of their property.

I have pointed out that the erection of corporations to exploit the streams of the Commonwealth already is an accomplished fact, therefore the "hobgoblin" raised by the gentleman from Southborough as to a future evil in that regard is disposed of beyond cavil.

Now as to State socialism. Massachusetts needs its proper development. This is a development which Massachusetts needs to make her economically independent. Did the west, when they found that to make arid lands fertile it was necessary for their Commonwealths to create great dams and reservoirs to provide a proper system of irrigation, consider that State socialism? The State of Maine, sir, already has this very power. The State of Maine has carried it in the form of statute to the extreme. In the State of Maine under the existing statute, if a water-power company refuses to obey an instruction of the State to make a further development, under statute the State immediately may make a taking of its property and control it in the direction in which the State desires it used, and the State uses it and returns it or may keep it upon the payment of compensation, in other words, by eminent domain. The State of Maine has realized the necessity for the development of its water-power. It has realized its dependence upon coal fields which lie in other sections of the country and has met the situation. Why should Massachusetts lag behind?

We need not fear that the Massachusetts Legislature is composed of men who are going to dispose of the interests of the people without proper considerations. Why, only a few years ago this very proposition confronted the Legislature. One of the streams has its head-waters in Massachusetts, differing from the Connecticut and the Merrimack, which have their head-waters in other States, is Miller's River. A very prominent capitalistic concern on State Street which has done very much in the west in the development of hydro-electric power conceived the idea that it would be possible at the head-waters

of Miller's River to construct storage reservoirs and retain the high waters of the spring to use them later in the season when by nature the course of the river would be low, to equalize the flow and thus preserve the water-power, making unnecessary the use of steam-power during the summer months by those plants. This corporation conceived the possibilities of that situation and it came to the Legislature of 1913, I believe, first, — I was a member of the body, — and asked for a charter to be allowed to construct at its own expense those storage reservoirs at the headwaters of Miller's River and to be allowed to charge and assess corporations lower upon the stream for the privilege of using the water that later might be realized from these storage reservoirs. The Legislature killed that proposition because in the conception of the majority of the members of the Legislature it was not proper to place this vast power in the hands of any private corporation, the Legislature feeling that if this vast power, this practical control of the flow of Miller's River, was to be created at all, it should be done by the Commonwealth itself. And that was the line of argument which mill owners lower down Miller's River presented through their counsel to the legislative committee which considered the matter, and that was the determining factor in the rejection of that proposition at that time by the Legislature.

So the question of the erection of private corporations should not frighten us, neither should the suggestion of State socialism.

The coal proposition is this: You know and the people of Massachusetts know to their sorrow that we here are dependent on other communities for our coal. You know that the only way you can help supply that deficiency in Massachusetts is to pass a resolution of this character which will make possible in Massachusetts the development of its water-power in order that to a certain extent at least we may supply this deficiency of light, heat and power to the people of Massachusetts. Is that a proper demand for the people of Massachusetts to make on this Convention? If it is, then this Convention should pass this resolution. If you believe in leaving the water-powers of Massachusetts where they now are, to wit, in the hands of private capital, then kill this resolution. [Applause.]

Mr. Walker of Brookline: There are about three minutes before the time for recess. Three minutes is all I shall wish on this subject. We have listened to two very great and very able speeches in favor of this resolution, one from the gentleman from Waltham treating of the general subject and one from the gentleman from Boston treating more specifically of this measure itself. The situation is very clear. We have in Massachusetts agricultural lands and we have some minerals. We have some forest and we have some water resources. Those natural resources now are in the hands and under the control of private individuals and private corporations and will be developed and operated and used solely for their private interest, from their point of view, regardless of the general welfare of the Commonwealth. Very well. So long as those private interests in developing those natural resources for their own benefit incidentally develop them in the interest of the whole Commonwealth, we are glad to have them developed that way. But when the Legislature sees that those natural resources are not being properly developed, sees that they are not being developed in the interest of all the people of the Commonwealth

of Massachusetts, then the State, in the interest of all the people, ought to step in and control the situation. This resolution merely gives to the Legislature the power to step in and control the situation when the public interest demands that control. I do not believe this Convention is going to withhold that power from the Legislature of Massachusetts. [Applause.]

Mr. Chandler of Somerville: I move the previous question.

Mr. HOBBS of Worcester: It seems to me very unfortunate that the previous question should be moved at this time. The matter has been discussed by several; I was hoping for a little more than the ten minutes that are allowed me under the rule. Of course the Convention is a law unto itself and if it does not desire to allow me any more, I at least have that. At the same time it does seem to me that I might have fairly a little more time than the ten minutes to discuss this important question.

The main question was ordered. Debate was resumed after the recess.

Mr. WEBSTER of Haverhill: It is an accepted axiom of philosophy that action and reaction are equal and opposite, and with almost equally inexorable certainty might we draw from history the deduction that never has there been an era of social dissolution and anarchy that was not preceded by a period of social injustice. Had it not been for the Bourbons, with their fatuous policy, culminating in the assumption of identity by an individual with the State, the pages of French history would be unsullied with the blood and tears of the French Revolution. Had it not been for ministerial stupidity and oppression exercised toward these struggling Colonies the empire of Great Britain would not have been bereft of the brightest jewel in its crown. And, sir, to-day in Russia had it not been for Czarism, with all its concomitants of the knout and dungeon and its long files of the most liberal and the bravest in the realm threading their way through dreary wastes to the death-in-life of Siberia, there would have been no Bolsheviki, whose mad acts now, even while our voices are raised, threaten the security of civilization. Sir, I am filled with alarm as I see that, in this enlightened assembly, still the voice of reaction and repression, repression of perfectly legitimate as well as undoubtedly sound and scientific conclusions and aspirations of the people of this country, shall dare be raised. I shrink, sir, from the contemplation of consequences which may ensue if we longer refuse to recognize the trend of events in this present day and deny to the people that measure of exercise over their own resources which every man of us sitting here knows they are intelligently and expectantly demanding.

I have had occasion before in this assemblage to ascribe the possession of statesmanship to the honorable member from Waltham who sits in this division (Mr. Luce). To my mind, sir, he never gave more convincing proof of that to this body than in his remarks of this morning, and I want to join his appeal for a forward looking vision as we approach our vote upon this matter. Some of us perhaps may sympathize with the view of that parliamentarian who once inquired: "What has posterity done for us?" Nevertheless, I believe that the claims of posterity should be recognized in this deliberative assembly. The natural resources of the Commonwealth are for the present moment the common possession of all who dwell within its confines.

They are the common heritage of those who must come after us, and of which is seized every child born in the Commonwealth of Massachusetts with his first breath. How shall we decide, in view of that scrutiny which coming generations will apply to our acts here, how shall we decide that this common heritage shall be administered? For the common good, — for the common good, sir? — or according to the interests of individual or corporate bodies which always must be narrow and provincial in their approach, and perhaps may be selfish?

That is the attitude I assume we are to take if we vote against this resolution.

Sir, it is an affront to humanity, it is a challenge flung in the face of thinking men, it is a denial of every principle in defence of which we are supposed now to be shedding our life and treasure. And we are asked to do this in the name of conservatism. Conservatism forsooth! It is the conservatism of the engineer who ties down his safety-valve and shovels fuel beneath an already overstrained boiler. It is the conservatism of the ostrich, with its head in the sand imagining that danger, because unseen, is afar off.

Sir, I plead for the adoption of the resolution. [Applause.]

Mr. Powers of Newton: It certainly is somewhat amusing to hear the claim made that the resolution which we now have under consideration is of a progressive nature. If we were to go back into English history, — for instance into the 17th century, — we should find that England had upon its statute-books laws very similar to this. In fact, the statutes of England at that time fixed the wages which were paid to working-men, the prices of every commodity which was sold in the markets of England. The industries of that country were controlled by statute law, and practically the terms of every contract were fixed by law. That policy continued for nearly one hundred years, and finally resulted in what is known as the Industrial Revolution of England, out of which grew the industrial policy known as the *laissez faire*, or, as it was translated, "Let things go." From that time a new policy was adopted in England, which not only revolutionized that country, but changed industrial conditions throughout the civilized world. It was the adoption of a policy of individual liberty and initiative, and that is the policy which has built up England. It is the same policy which has developed France; the same policy that has been in existence in this country ever since the settlers landed at Jamestown and Plymouth. The State or the government stands in its relation to the individual as policeman, and says: "Work out your own fortune; acquire property; till your lands; do whatever you choose, but you must not interfere with another man doing the same thing that you are doing."

This freedom and initiative have developed this country, cleared off the forests, built canals and railroads, developed the great middle west, and finally worked its way over the Rocky Mountains to the Pacific coast. We now have come to the parting of the ways. If we adopt this resolution, we say to the Legislature that we put our stamp of approval upon pure socialism in Massachusetts, and against individual initiative. Is this Convention prepared to do that?

Mr. Butler of Brockton: I want to appeal to the members of this Convention to consider this resolution. Do you want to see Massachusetts produce from 65 to 75 per cent of what the inhabitants of

the State use? Do you want to see that, when to-day they produce but 15 per cent? If you do, pass this measure along as it is, so that it will give the Legislature the right to grant legislation that will do that. And that is not an idle thought; that is a thought which has been considered by the National government's experts and our State experts. Those are facts which will be realized after the man power of this world comes back from destruction and work for construction again, which will come after the close of this most cruel war. You have learned, gentlemen of this Convention, that leaders in the counsel for the corporations have called this a socialistic measure. I believe there is not one particle of socialism mixed in it. I think that it is purely and justly a measure to upbuild the agricultural interests and other interests which may be developed in the State. For those reasons I hope that this Convention will pass this measure as it now stands.

Mr. WELLMAN of Topsfield: I cannot help feeling that this is one of the most important measures before this body, and it seems somewhat strange to me, in view of the importance of the measure, that many of the arguments in its favor are such that I ought not in the least to consider them. Is it to be supposed that I, in pursuance of my duty here, should vote for a measure in which I do not believe because, forsooth, there would be some votes gained somewhere else against another pernicious measure? Is that the ideal with which I should stand here and vote? And then it is said, it is purely assumed, that a certain state of affairs exists here, somewhat like the French Revolution, and that this measure is a measure which is designed to greatly benefit the people. But that has not been proved. That is assumed. There are some things about this measure, however, which we do know, and I cannot help feeling that the men here are voting because they do not quite understand the vast power that exists in this measure. The right of eminent domain is a tremendous power, always liable to abuse, and we are extending it in this amendment beyond the vision of any man who listens to me. We do not know the vast extent to which we are extending that power. Now, when you give government such a power as this, what has happened in other places, and what is the temptation that will be before the party in power and before the Legislature? It will be clearly this: To say to the man who owns property "You do as we say, or we will crush you". That is the exact position in Germany to-day with just these powers. No man can do great business there and oppose the government and live, and we put that same power into the hands of our Legislature. You say: "They are wise men. They will deal well with it." I grant it. But is it well to trust any man with that kind of enormous power? This measure is not progressive. It is an attack on human liberty. It is the greatest attack on personal liberty that has been brought up in this Convention, and I say stand by personal individual liberty if you want progress and great success for the old Commonwealth of Massachusetts. [Applause.]

Mr. BENNETT of Saugus: My friend in the first division (Mr. Powers), who also sits in the rear and wisely speaks from the front, declares that this is the most important measure of the session. I do not remember any measure in this Convention so insignificant or so modest that some sympathetic soul has not arisen and pronounced it

the most important measure of the Convention. This is an important measure. It must be broad.

Now let me tell you how the water-power of Minneapolis was created. At St. Anthony's Falls the rock was so soft that it moved back a great many feet, if not a mile, every year. They got an appropriation from the Federal government to improve the navigation of the Mississippi River. They ran a tunnel under there, and put cement in, and made a false terminal, and they put somewhere about one thousand to ten thousand little lakes up north of Minneapolis and created permanent reservoirs and created a water-power which has made Minneapolis the foremost manufacturing center in the United States. When they created the cities of Lowell and Lawrence private enterprise had to do everything. They had to take the water-power of Lake Winnepesaukee, and they had to build dams at Manchester and Lowell and Lawrence, and twenty-five years ago all the fine cotton goods used in the United States were imported. In a hundred years we had not been able to fully develop that industry.

Let us not be so much afraid of the Legislature. You have got to trust somebody. You have got to trust the manager, you have got to trust the salesman, you have got to trust the bookkeeper. Let us trust the Legislature, because this matter has got to be broad.

I have not much time, but take this, for instance: Here is a man who has an ice pond. The water-power was a woolen mill. Then the woolen mill went to pieces, and it was a wool pulling establishment. Then wool pulling became unprofitable, and it became an ice pond, and somehow or other that became illegal, but nobody knows, nobody looks into it. Now the ice pond floods all the shores around and makes acres or miles of morass which ought to be reclaimed. The Commonwealth has got to get into the business of straightening these matters out, — the Commonwealth, which is showing us as never before the effectiveness of governmental action in many enterprises.

We need something of this kind. I am not afraid but it is going to be adopted, and I should not have been the least afraid had it not been for the astonishing action of the Convention this morning on that modest, little, insignificant proposition, — the homestead law. But the Convention went so curiously that it seemed to me this is one of the ultra-conservative days, and they are liable to err in that direction.

In reply to the gentleman from Worcester (Mr. Dresser) there is hardly a State in the west that does not have a law like this. In Utah their ditch companies and their ditch aggregations of neighbors have reclaimed the agricultural land. The same is true in Indiana, and a gentleman showed you this morning that it is being adopted in the State of Maine. If we adopt it here we do something to put Massachusetts in line with the other Commonwealths for the preservation and development of natural resources, and I think we can trust the Legislature in the matter, and I hope the amendment will pass.

Mr. Hobbs of Worcester: It is obviously impossible to cover so long and tangled a subject in ten minutes. I shall therefore confine myself to one or two points that have been touched upon in this debate.

The gentleman from Wellesley (Mr. Pillsbury) has intimated that there is some reason for this resolution so far as development and conservation go. With that admission I feel that I may claim that this resolution has some virtue and approach the proposition as to the utilization which in his mind and in the minds of others seems to to be the sticking point.

The gentleman from Southborough (Mr. Choate) stated that it was one great objection to the measure that it left in question as to whether this proposition did not give the Legislature the right to tell a man how he should use his own property. I am going to give you one illustration to indicate how some men in this community are using their own property and these resources. There is a certain river in this Commonwealth upon which there are some seven mill privileges. They all were used once. One company, a large, powerful company, has acquired those seven privileges one after the other, and six of them now are lying idle and waste, not because they are not valuable but to keep away competition. It is that sort of thing that is going on under the sacred untrammeled right of individual property that the gentleman from Newton (Mr. Powers) has pleaded for so powerfully. I wish to put it to this Convention if there is anything so sacred in vested right that it justifies us in countenancing waste, that it justifies us in countenancing letting lie idle that which ought to be turned to the good and profit of the community. That is one question which is involved in this proposition.

So far as relates to water-powers I would suggest to you that the regulation of the use of the property is one of the most important things in conservation legislation. It makes all the difference in the world whether the powers along the stream are being used properly as to the development of the maximum of power in that stream. If they are developed only to a small portion of their value, if the power once developed is allowed to run to waste, that never can be made up in any other way, and it is for that reason that the word "utilization" was put into this measure.

As to what the gentleman from Southborough (Mr. Choate) has said, that this would be a bulwark to the greedy rich, if he had been here when the matter was discussed in the preceding stage he would have known that the Convention had before it a proposition to limit the use of this article to the Commonwealth alone. That proposition was discussed and rejected by the Convention on the argument that this was not a proposition directed toward establishing greater State activity alone; it was intended to give greater power to individuals under proper restrictions as well.

The gentleman from Saugus (Mr. Bennett) has indicated some of those ways. The western States have constitutional provisions under which private associations of individuals can get together and develop their land properly, irrigating the dry land, draining the wet land, and thereby conserving that individual initiative which I join some of the opponents of this measure in appreciating, and not tending toward the State socialism which apparently is so great a bugbear in the minds of many of this Convention.

As to State socialism, I would call to the attention of this Convention that the writing of a few words into our Constitution brings the State no nearer and no further from State socialism. The thing

that produces socialism is the existence of conditions that breed socialism, and I know of no condition which will go further toward the breeding of socialism than seeing men placed, by virtue of the ownership of certain property, in a position that authorizes them to prey upon the community, using that property only for their own selfish ends, neglecting entirely the proper development of the community and the needs of the community, and feeling themselves free to use it or let it go to waste as they see fit. Those propositions, it seems to me, go further to create socialism than any words that we may possibly write into the Constitution.

Mr. LORING of Beverly: Having addressed the Convention once on this subject I should not have spoken again had not the gentleman from Southborough (Mr. Choate) called to my attention certain facts which I did not mention in my former address. In the first place, he spoke of the clay banks of this Commonwealth and bricks. Now, bricks are made from a natural resource, and they cannot be brought into competition. I do not know whether the gentleman from Southborough (Mr. Choate) was counsel for the company, but I do know that all the bricks and every clay bank in Massachusetts and in the surrounding States are absolutely owned and controlled by a foreign corporation, and that when I build a mill or you build a chimney you pay a tribute to that corporation.

The other point that came to my mind when the gentleman from Southborough (Mr. Choate) was speaking was this: That he comes from a part of the country where the largest public undertaking by the State that has been done for a great many years took place, and that was the establishment of the metropolitan water supply. A great deal of low land and a great deal of other land which was used after a fashion was taken from the owners of the land for the public use, and I have yet to see a single individual who was not fully compensated for everything that was taken from him. Now, this resolution carries with it, owing to the way it was amended, full and just compensation for anything that is taken from the individual for the benefit of the public, and I think with that provision in it it safely and conservatively can be passed. [Applause.]

The Convention voted Wednesday, August 7, by a call of the yeas and nays, by a vote of 136 to 86, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 172,111 to 102,768.

XII.

NECESSARIES OF LIFE.

Messrs. Robert E. Bigney of Boston, Thomas J. Boynton of Everett, John T. Shea of Cambridge, John Q. A. Brackett of Arlington, Walter H. Creamer of Lynn, Louis F. Delaney of Holyoke, Daniel R. Donovan of Springfield, James P. Donnelly of Lawrence, John D. O'Connor of Chicopee, John A. Donoghue of Boston, Archie N. Frost of Lawrence, Francis J. Horgan of Boston and William H. Sullivan of Boston, presented resolutions numbered, respectively, 9, 10, 11, 51, 102, 104, 232, 233, 234, 235, 238, 239 and 240, which were referred to the committee on Public Affairs.

On the 11th of July, 1917, the committee reported the following resolution (No. 318):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The General Court may authorize the Commonwealth to take by purchase or otherwise food-stuffs, fuel, ice and other necessaries of life, and to sell the same to the inhabitants thereof or to any county, city, town or other municipal corporation therein; and may authorize municipalities to buy and to sell to their inhabitants such necessaries of life, and to harvest and manufacture ice. The General Court may authorize the establishment, maintenance and operation by the Commonwealth, cities and towns, of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses and other like means for producing, selling and distributing the necessaries of life.

Mr. Albert E. Pillsbury of Wellesley moved that the resolution be amended by striking out the article of amendment, and inserting in place thereof the following:

The Legislature, when and so far as in its judgment a public exigency exists therefor, may provide for the purchase or taking by the Commonwealth of foods or food-stuffs, fuel or ice, for sale to its inhabitants or to any county, city or town and resale by such county, city or town to its inhabitants.

This amendment was withdrawn and the following was substituted:

The Legislature, when and so far as in its judgment a public exigency exists therefor, may provide for the purchase or taking by the Commonwealth, paying reasonable compensation therefor, of foods or food-stuffs, feeds, fuel or ice, for sale to its inhabitants or to any county, city or town and resale by such county, city or town to its inhabitants, and in connection therewith may provide for the purchase or taking by the Commonwealth, paying reasonable compensation therefor, of the right to occupy and use any building or structure with the machinery or fixtures appurtenant thereto, or any other premises, so far and so long as may be necessary to such purposes. If in the judgment of the Governor such public exigency arises when the Legislature is not in session, the Governor, with the approval of the Council, may exercise the authority vested in the Legislature by this section until the Legislature reconvenes.

This amendment was rejected, by a vote of 96 to 157.

Mr. Fred H. Williams of Brookline moved that the above amendment be amended by striking out in the first line the word "Legislature" and inserting in place thereof the words "General Court".

This amendment was rejected.

The same gentleman moved that the amendment moved by Mr. Pillsbury be amended by adding at the end thereof the following:

If a public exigency arises when the General Court is not in session, the Governor, with the approval of the Council, may exercise the authority vested in the General Court by this section, until the General Court reconvenes.

This amendment was withdrawn.

Mr. Robert P. Clapp of Lexington moved that the resolution be amended by inserting before the word "ice", in line 4, the word "and"; by striking out, in lines 4 and 5, the words "and other necessaries of life"; by inserting before the word "slaughter-houses", in line 13, the word "and;" and by striking out, in lines 13, 14 and 15, the words "and other like means for producing, selling and distributing the necessaries of life."

These amendments were withdrawn.

Mr. Robert E. Bigney of Boston moved that the resolution be amended by striking out the word "like", in line 14; and by inserting after the word "means", in the same line, the words "incidental thereto".

These amendments were withdrawn.

Mr. Samuel W. George of Haverhill moved that the resolution be amended by adding the following words:

Nothing herein contained shall be construed as authorizing or permitting the Commonwealth or any political division thereof to deal in spirituous and intoxicating liquors.

This amendment was withdrawn.

Mr. John Q. A. Brackett of Arlington moved that the resolution be amended by inserting after the word "ice", in line 9, the words: "; provided, that a just and reasonable compensation for all property so taken shall be paid to the owners thereof."

This amendment was rejected, by a vote of 48 to 169.

Mr. Brooks Adams of Quincy moved that the resolution be amended by adding the following words:

; and the General Court may further authorize the Commonwealth, acting either in its corporate capacity, or through the agency of such municipal or other corporations as it may select or create for the purpose, to organize, conduct or administer such agricultural, commercial, industrial or trading undertakings or enterprises, as the General Court shall declare to be conducive to the public welfare.

This amendment was withdrawn.

Mr. Francis N. Balch of Boston moved that the resolution be amended by inserting at the beginning of the resolution the words: "In time of war or general distress"; and by adding at the end the words: "Such authorization shall be for not more than two years at a time, but may be repeated from year to year so long as the war or time of general distress shall last. The General Court shall be sole judge of the existence of the conditions justifying such authorizations. Nothing in this article contained shall be construed as permitting any taking of property without reasonable compensation therefor."

These amendments were withdrawn.

Mr. Edwin U. Curtis of Boston moved that the resolution (No. 318) be amended by striking out the article of amendment, and inserting in place thereof the following:

The General Court, when and so far as in its judgment a public exigency exists therefor, and while it continues, may authorize the Commonwealth to provide temporary shelter and to take by eminent domain or purchase food-stuffs, fuel and ice, and feed for animals, and to sell the same to the inhabitants thereof or to any county, city, town or other municipal corporation therein, which may resell the same to their inhabitants; and in connection therewith may authorize the establishment, maintenance and operation by the Commonwealth, cities and towns of markets, docks, fuel and coal yards, elevators, warehouses, canneries and slaughter-houses. When the General Court is not in session, the Governor, with the approval of the Council, may exercise the authority vested in the General Court by this section, until the General Court reconvenes.

On a call of the yeas and nays, this amendment was rejected, by a vote of 122 to 156.

Mr. Albert E. Pillsbury of Wellesley moved that the above amendment be amended by striking out the words "may authorize the establishment, maintenance and operation by the Commonwealth, cities and towns of markets, docks, fuel and coal yards, elevators, warehouses, canneries and slaughter-houses", and inserting in place thereof the words "may authorize the Commonwealth to purchase or take, paying reasonable compensation therefor, the right to occupy and use any building or structure with the machinery or fixtures appurtenant thereto, or any other premises, so far and so long as may be necessary to such purposes".

This amendment was rejected.

Mr. Josiah Quincy of Boston moved that the resolution (No. 318) be amended by adding at the end thereof the following:

Until otherwise provided by legislation, the Governor, with the approval of the Council, may take possession of, use and employ any commodity included within the terms of this article in the same manner as authorized by existing law to take possession of, use and employ fuel, and subject to all provisions of existing law relating to the exercise of such authority, and may further enter into any contracts in the name of the Commonwealth to secure the production, sale, transportation and delivery of any such commodity, whether within or without the Commonwealth, and may further sell and deliver any such commodity to any municipal corporation or county within the Commonwealth; and, with the approval of the Governor and Council, any municipal corporation may enter into a like contract, and may sell and distribute any such commodity to its inhabitants in such manner as may be authorized by the Governor and Council.

This amendment was withdrawn.

Mr. Albert E. Pillsbury of Wellesley moved that the resolution (No. 318) be amended by striking out the article of amendment and inserting in place thereof the following:

The Legislature, when and so far as in its judgment a public exigency exists therefor, may provide for the purchase or taking by the Commonwealth, paying reasonable compensation therefor, of foods or food-stuffs, feeds, fuel or ice, for sale to its inhabitants or to any county, city or town and resale by such county, city or town to its inhabitants, and in connection therewith may provide for the purchase or taking by the Commonwealth, paying reasonable compensation therefor, of the right to occupy and use any building or structure with the machinery or fixtures appurtenant thereto, or any other premises, so far and so long as may be necessary to such purposes. If in the judgment of the Governor such public exigency arises when the Legislature is not in session, the Governor, with the approval of the Council, may exercise the authority vested in the Legislature by this section until the Legislature reconvenes.

This amendment was superseded by the final new draft offered by Mr. Anderson, which was adopted.

Mr. George F. Willett of Norwood moved that the resolution (No. 318) be amended by adding at the end thereof the words:

The use of a uniform method of accounting throughout the Commonwealth shall be provided by law for any undertakings under the authority of this article.

This amendment was not acted upon, it being incorporated in the final new draft offered by Mr. Anderson, which was adopted.

Mr. George W. Anderson of Brookline moved that the resolution be amended by striking out the article of amendment and inserting in place thereof the following:

The Commonwealth may by statute duly enacted authorize the taking by purchase or otherwise of food-stuffs, feed, fuel, ice and other necessaries of life, paying reasonable compensation therefor, and the sale of the same to the inhabitants thereof or to any county, city, town or other municipal corporation therein; and may also authorize municipalities to buy and to sell to their inhabitants such necessaries of life, and to harvest and manufacture ice. The Commonwealth may also by statute duly enacted authorize the establishment, maintenance and operation by the Commonwealth, cities and towns, of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses and other like means of producing, selling and distributing the necessaries of life.

Mr. Albert E. Pillsbury of Wellesley moved that the amendment moved by Mr. Anderson be amended by striking out the words proposed to be inserted, and inserting in place thereof the following:

The Legislature, when and so far as in its judgment a public exigency exists therefor, may provide for the purchase or taking by the Commonwealth, paying reasonable compensation therefor, of food or food-stuffs, feeds, fuel or ice, for sale to its inhabitants or to any county, city or town and resale by such county, city or town to its inhabitants, and in connection therewith may provide for the purchase or taking by the Commonwealth, paying reasonable compensation therefor, of the right to occupy and use any building or structure with the machinery or fixtures appurtenant thereto, or any other premises, so far and so long as may be necessary to such purposes.

No action was taken on this amendment because the Convention had rejected a similar amendment moved by the same gentleman as a substitute for the resolution reported by the committee (No. 318).

Mr. Paul R. Blackmur of Quincy moved that the amendment moved by Mr. Anderson be amended by inserting after the word "warehouses," the words "cold storage plants;" and by inserting after the word "collecting," the word "preserving."

This amendment was withdrawn.

The amendment moved by Mr. Anderson was withdrawn and the following was substituted:

The Commonwealth may by statute duly enacted authorize the taking by purchase or otherwise of food-stuffs, feeds, fuel, ice and other necessaries of life, paying reasonable compensation therefor, and the sale of the same to the inhabitants thereof and to any county, city, town or other municipal corporation therein; the Governor, with the approval of the Council, if he deems that a public exigency exists, may, until otherwise provided by law, exercise the powers hereby granted. The Commonwealth may, by statute duly enacted, authorize municipalities to buy and to sell to their inhabitants the necessaries of life and to harvest and to manufacture ice; and may also in like manner authorize the establishment, maintenance and operation by the Commonwealth and by cities and towns of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses and other like means for collecting, converting, selling and distributing the necessaries of life.

This amendment was withdrawn, and the following was substituted (document No. 358):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

Provision may be made by law to authorize the taking by purchase or otherwise by the Commonwealth of food-stuffs, feeds, fuel, ice and other necessaries of life,

paying reasonable compensation therefor, and the sale of the same to the inhabitants thereof and to any county, city, town or other municipal corporation therein; the Governor, with the approval of the Council, if he deems that a public exigency exists, may, until otherwise provided by law, exercise the powers hereby granted. Provision may be made by law to authorize municipalities to buy and to sell to their inhabitants the necessaries of life and to harvest and to manufacture ice; and to provide for the establishment, maintenance and operation by the Commonwealth and by cities and towns of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses, cold storage plants and other like means for collecting and converting, selling and distributing the necessaries of life. The use of uniform methods of accounting throughout the Commonwealth shall be provided for by law for any undertakings under the authority of this article.

Mr. David T. Montague of Boston moved that the above amendment be amended by striking out the word "Commonwealth," wherever it occurs, and inserting in place thereof, in each instance, the words "The General Court."

These amendments were rejected.

This amendment (document No. 358) was adopted and, accordingly, this new draft was substituted for the resolution reported by the committee (No. 318) and was ordered to a second reading Wednesday, September 26.

Mr. Charles F. Dutch of Winchester moved that document No. 358 be amended by inserting at the beginning of the article of amendment the words: "When and so far as a public exigency exists therefor and while it continues"; by striking out, in lines 8 to 12, inclusive, the words "the Governor, with the approval of the Council, if he deems that a public exigency exists, may, until otherwise provided by law, exercise the powers herein granted. Provision may be made", and inserting in place thereof the word "and"; and by inserting after the word "life", in line 20, the words "when the General Court is not in session the Governor, with the approval of the Council, may, until otherwise provided by law, exercise the powers herein granted."

These amendments were withdrawn.

Mr. John W. Cummings of Fall River moved that the above amendment be amended by striking out the words proposed to be inserted at the beginning of the article of amendment and inserting in place thereof the words "Whenever the public exigencies require."

The amendments moved by Mr. Dutch having been withdrawn, action on this amendment was precluded.

Mr. Josiah Quincy of Boston moved that the new draft (No. 358) be amended as follows: By striking out, in lines 3 and 4, the words "Provision may be made by law to authorize the taking by purchase or otherwise by the Commonwealth of", and inserting in place thereof the words "The Commonwealth may be authorized by law to contract for or to take by purchase or otherwise"; by striking out, in line 6, the words "the sale of", and inserting in place thereof the words "to sell"; by inserting after the word "therein", in line 8, the words "also to provide temporary shelter;" and by inserting after the word "converting," in line 19, the words "preserving, storing".

These amendments were withdrawn.

Mr. James P. Richardson of Newton moved that the new draft (No. 358) be amended as follows: By inserting after the word "fuel," in line 5, the word "and;" by striking out, in line 5, the words "and other necessaries of life"; by striking out, in lines 13 and 14, the words "necessaries of life", and inserting in place thereof the words "food-stuffs, feeds, fuel and ice"; by striking out, in

line 20, the words "the necessaries of life", and inserting in place thereof the words "food-stuffs, feeds, fuel and ice"; and by adding at the end thereof the words "; and all offices and positions created in connection with any such undertakings shall be filled in accordance with the laws and regulations governing the classified civil service of the Commonwealth and its municipalities."

These amendments were withdrawn.

Mr. Edwin U. Curtis of Boston moved that the new draft (No. 358) be amended by striking out the article of amendment, and inserting in place thereof the following:

In time of emergencies and distress provision may be made by law, while such emergencies and distress continue, to authorize the Commonwealth to provide temporary shelter and to take by eminent domain, or to purchase in any market food-stuffs, medicines, fuel, ice, clothing, boots and shoes, and feed for animals, and to sell the same to the inhabitants thereof, to the inhabitants of other States, or to any county, city, town or other municipal corporation in this Commonwealth, which may resell the same to their inhabitants, and in connection therewith may authorize the establishment, maintenance and operation by the Commonwealth, cities and towns of markets, docks, fuel and coal yards, elevators, warehouses, canneries and slaughter-houses. When the Legislature is not in session, the Governor, with the approval of the Council, may exercise the authority vested in the Legislature by this section until the Legislature reconvenes and acts.

This amendment was withdrawn.

Mr. Martin M. Lomasney of Boston moved that the resolution (No. 358) be amended by striking out the article of amendment, and inserting in place thereof the following:

The maintenance, at reasonable rates, of a sufficient supply of food and other common necessaries of life, and of shelter, during times of war, emergency or distress, is a public function and it shall be the duty of the Commonwealth and of the cities and towns therein to take and to provide the same for their inhabitants in such manner as the Legislature shall determine.

This amendment was adopted, by a rising vote of 142 to 85, and the resolution, in the above form, was ordered to a third reading Wednesday, October 3.

Mr. George W. Anderson of Brookline moved that the resolution (No. 358) be amended by striking out the article of amendment, and inserting in place thereof the following: —

Section 1. Whenever the public exigencies require, provision may be made by law to authorize the Commonwealth to contract for or to take by purchase or otherwise food-stuffs, feeds, fuel, ice and other necessaries of life, paying reasonable compensation therefor, and to sell the same to the inhabitants thereof and to any county, city, town or other municipal corporation therein for resale to the inhabitants thereof, also to provide temporary shelter; the Governor, with the approval of the Council, if the Legislature is not in session, may, until otherwise provided by law, exercise the powers hereby granted.

Section 2. Provision may be made by law to authorize municipalities to buy and to sell to their inhabitants the necessaries of life and to harvest, to manufacture and to sell ice; and to provide for the establishment, maintenance and operation by the Commonwealth and by cities and towns of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses, cold storage plants and other like means for collecting and converting, preserving, storing, selling and distributing the necessaries of life. The use of uniform methods of accounting throughout the Commonwealth shall be provided for by law for any undertakings under the authority of this section; and all offices and positions created in connection with any undertakings under this section shall be filled in accordance with the laws and regulations governing the classified civil service of the Commonwealth and its municipalities.

This amendment was withdrawn.

Mr. Arthur S. Kneil of Westfield moved that the resolution (No. 358) be amended by adding at the end thereof the words:

Provision may be made by any such law for the payment of damages to any person owning an established business, whether the same shall be taken or not, for a decrease in value of such business, whether by loss of custom or otherwise, by the carrying out of such law.

This amendment was rejected.

Mr. Robert P. Clapp of Lexington moved that the resolution (No. 358) be amended by striking out the article of amendment, and inserting in place thereof the following: —

Whenever the public exigencies require, the Legislature (1) may authorize the Commonwealth to provide shelter and to contract for, or to take by purchase or otherwise, paying reasonable compensation therefor, foods, food-stuffs, feeds for animals, fuel and ice, and to sell the same to the inhabitants thereof and to any municipal corporation or political division therein; (2) may authorize municipalities to buy and to sell to their inhabitants said necessaries of life and to harvest and manufacture ice; and to those ends (3) may authorize the Commonwealth and cities and towns to establish, maintain and operate all necessary means for collecting, converting, preserving, storing and distributing said necessaries of life. When the Legislature is not in session, the Governor, with the approval of the Council, may until otherwise provided by law exercise the powers hereby authorized. The use of uniform methods of accounting throughout the Commonwealth shall be provided by law for any undertakings under the authority of this article.

Action on this amendment was precluded by the adoption of the amendment moved by Mr. Lomasney of Boston.

Mr. Charles T. Tatman of Worcester moved that the above amendment be amended by inserting after the word "Whenever", in line 1, the words "during times of war, emergency or distress".

This amendment was not acted upon for the reason stated above.

Mr. Augustus P. Loring of Beverly moved that the resolution (No. 358) be amended by striking out the article of amendment, and inserting in place thereof the following: —

Section 1. Provision may be made by law whereby the Commonwealth, or any political division thereof, may at any time contract for, or take by purchase or otherwise, upon payment of a reasonable compensation therefor, food-stuffs, feeds, fuel, ice, and in a time of public emergency any other necessary of life, — and may sell the same to inhabitants of the Commonwealth, or to any county, city, or town, or other municipal corporation therein; and may establish, maintain and operate markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses, ice houses, cold storage plants, and other similar means for collecting, preserving, converting, selling or distributing the same.

Section 2. The existence of a public emergency within the meaning of this article shall be determined by the General Court, or, if it is not in session, by the Governor and Council.

Section 3. Provision shall be made by law for the use throughout the Commonwealth of uniform methods of accounting in the conduct of any undertaking carried on under the authority of this article.

This amendment was withdrawn.

Mr. Louis A. Coolidge of Milton moved that the resolution (No. 358) be amended by striking out, in lines 13 and 14, the words "to buy and to sell to their inhabitants the necessaries of life and".

This amendment was rejected.

Mr. Arthur H. Lowe of Fitchburg moved that the resolution (No. 358) be amended by inserting before the word "collecting", in line 19, the word "producing".

This amendment was withdrawn.

Mr. David T. Montague of Boston moved that the resolution (No. 358) be amended by striking out, in lines 3 and 12, respectively, the words "Provision

may be made by law", and inserting in place thereof, in each instance, the words "The General Court may".

These amendments were withdrawn.

Mr. Robert Luce of Waltham moved that the resolution (No. 358) be amended by striking out the article of amendment, and inserting in place thereof the following: —

The General Court may determine what is a public use.

Action on this amendment was precluded by the adoption of the amendment moved by Mr. Lomasney of Boston.

The committee on Form and Phraseology reported Wednesday, October 10, that the resolution ought to be adopted in the following form (No. 363):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The maintenance and distribution at reasonable rates, during time of war, public exigency, emergency or distress, of a sufficient supply of food and other common necessaries of life, and the providing of shelter, are public functions, and it shall be the duty of the Commonwealth and of the cities and towns therein to take and to provide the same for their inhabitants in such manner as the General Court shall determine.

This new draft was discharged from the Orders of the Day Wednesday, October 10, and was specially assigned for debate at 2 o'clock on that same day.

The new draft recommended by the committee on Form and Phraseology was adopted, by a vote of 138 to 47.

Mr. Ezra W. Clark of Brockton moved that the new draft be amended by adding at the end thereof the following:

The Legislature may, during the times of war, emergency, distress or public exigency, provide for control and regulation of the distribution, storage and sale of food and other common necessaries of life. The Legislature shall have the sole and full power to determine when a state of war, an emergency, a condition of distress or exigency as contemplated in this article of amendment, exists.

This amendment was rejected.

Mr. Albert E. Pillsbury of Wellesley moved that the new draft (No. 363) be amended by striking out the article of amendment and substituting the following:

The maintenance and distribution at reasonable rates, during time of war, public exigency, emergency or distress, of a sufficient supply of food for man and animals, fuel and ice, and the providing of shelter, are public functions, and the Commonwealth and the cities and towns therein may, under such conditions, take and provide the same for their inhabitants in such manner as the General Court shall determine.

This amendment was rejected.

Mr. John F. Cusick of Boston moved that the new draft (No. 363) be amended by striking out the article of amendment and inserting in place thereof the following:

During times of war, public emergency or public distress, the Commonwealth and the cities and towns therein shall have power to take by right of eminent domain or purchase, and to sell and distribute food and the common necessaries of life and provide shelter for their inhabitants in such manner as the General Court shall determine.

This amendment was rejected.

Mr. Edward Carr of Hopkinton moved that the new draft (No. 363) be amended by striking out, in lines 3, 4 and 5, the words: "during the time of war, public exigency, emergency or distress."

This amendment was withdrawn.

Mr. Francis N. Balch of Boston moved that the new draft be amended by striking out the comma after the word "war", in line 4, and inserting in place thereof the word "or"; by striking out, in the same line, the word "exigency"; by striking out, in lines 4 and 5, the words "or distress"; and by adding at the end thereof the words "during such time as the General Court may adjudge that war or public emergency exists."

These amendments were rejected.

Mr. Robert Luce of Waltham moved that the new draft (No. 363) be amended by striking out the article of amendment and inserting in place thereof the following:

The General Court may determine what is a public use.

This amendment was rejected.

Mr. Arthur H. Lowe of Fitchburg moved that the new draft (No. 363) be amended by inserting after the word "maintenance", in line 3, the word ", production".

This amendment was rejected.

Mr. Paul R. Blackmur of Quincy moved that the new draft (No. 363) be amended by inserting after the word "maintenance", in line 3, the word "preservation".

This amendment was rejected.

Mr. George F. Willett of Norwood moved that the new draft (No. 363) be amended by inserting in line 3, at the beginning of the article of amendment, the words "The material welfare of the people depends upon the encouragement of enough initiative in developing the economic resources of the Commonwealth and upon fostering the industries and enterprises of the people."

This amendment was rejected.

Mr. Charles F. Dutch of Winchester moved that the new draft (No. 363) be amended by striking out, in line 4, the word "exigency".

This amendment was rejected, by a vote of 83 to 104.

Mr. Joseph F. O'Connell of Boston moved that the new draft (No. 363) be amended by inserting after the word "distress", in line 5, the words "to be determined by the Legislature"; and by striking out, in lines 6 and 7, the words "are public functions", and inserting in place thereof the words "may be considered to be public functions when so determined by the Legislature".

These amendments were rejected, by a vote of 63 to 98.

Mr. Abner S. McLaud of Greenfield moved that the new draft (No. 363) be amended by striking out, in line 3, the words "At reasonable rates"; and by inserting after the word "take", in line 8, the words "paying reasonable compensation therefor".

These amendments were rejected.

Mr. Clarence W. Hobbs, Jr., of Worcester moved that the amendment recommended by the committee on Form and Phraseology be amended by the substitution of the following:

SECTION 1. Whenever the public exigencies require, provision may be made by law to authorize the Commonwealth to contract for or to take by purchase or otherwise food-stuffs, foods, fuel, ice and other necessaries of life, paying reasonable compensation therefor, and to sell the same to the inhabitants thereof and to any county, city, town or other municipal corporation therein for resale to the inhabitants thereof; also to provide temporary shelter; the Governor, with the approval of the Council, if the Legislature is not in session, may, until otherwise provided by law, exercise the powers hereby granted.

SECTION 2. Provision may be made by law to authorize municipalities to harvest, to manufacture and to sell ice; and to provide for the establishment, maintenance and operation by the Commonwealth and by cities and towns of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses, cold storage plants and other like means for collecting and converting, preserving, storing, selling and distributing the necessaries of life. The use of uniform methods of accounting throughout the Commonwealth shall be provided for by law for any undertakings under the authority of this section.

This amendment was rejected, by a call of the yeas and nays, by a vote of 92 to 132.

The Convention adjourned and reconvened immediately in order that the resolution might be acted upon in time to submit it to the people at the coming State election. Perfecting amendments in phraseology, offered by Mr. Frank F. Dresser of Worcester, were adopted and the amendment was submitted to the people as follows:

ARTICLE OF AMENDMENT.

The maintenance and distribution at reasonable rates, during time of war, public exigency, emergency or distress, of a sufficient supply of food and other common necessaries of life and the providing of shelter, are public functions, and the Commonwealth and the cities and towns therein may take and may provide the same for their inhabitants in such manner as the General Court shall determine.

It was ratified and adopted by the people Tuesday, November 6, 1917, by a vote of 261,119 to 51,826.

THE DEBATE.

Mr. ANDERSON of Brookline: If the members of the Convention will look at the report which precedes the resolution which has just been read (No. 318), they will observe that there was a very large number of documents referred to us and dealt with in this single report and accompanying resolution. I do not believe that it is desirable for me to direct your attention in detail to all the various propositions for enlarging our legislative power. You can find them from these numbers on the first page of our report. I think you will conclude that the subject-matter of this resolution invoked as much public interest as any one matter before the Convention, — except of course our old friend (and enemy), the I. and R. Indeed, the fact that without action by the committee on Public Affairs the Convention almost spontaneously has given this matter precedence, in order that, if possible, it might go on to the ballot for the November election and enlarge the legislative power for the coming winter, indicates the large degree of public interest and Convention interest there is in this subject-matter.

Now, we took, in the committee on Public Affairs, the numerous suggestions set forth in the documents referred to, and worked out the resolution set forth on page 3 of document 318. I now direct your attention very briefly to just what that signifies. It is, by mere reading, almost as plain as it can be made. Perhaps a few words may make it a little clearer. "The General Court may authorize the Commonwealth to take by purchase or otherwise,"— that is a grant of the power of eminent domain, couched in the ordinary language, — "foodstuffs, fuel, ice and other necessaries of life."

The proposition is to authorize a taking in case of necessity. Please bear in mind that we are not now legislating, we are providing power to legislate, — a distinction which I find many of the learned members of this Convention, as well as many of the witnesses who came before the committee, are constantly forgetting; it is not now a question of

whether that power ought to be exercised, now or at any other time; the question is whether the Legislature ought to have the power at any time to exercise any or all of the powers which we now are discussing. I digress further to say that I for one, never having been, you know, in the Legislature, have profound confidence in the wisdom and integrity of that body. [Applause.]

We limited this first provision to food-stuffs, fuel, ice and other necessaries. What may be a "necessary" I agree is a matter sometimes open to debate. What is "necessary" to some of the wealthy members of this Convention, those of us who have been accustomed to plain living and high thinking sometimes think are mere luxuries. I know of no method by which you can avoid that possible difficulty in a constitutional grant of power. I think it should be left for the wise Legislature to determine what is necessary, naming it in the legislation enacted.

The next grant of power is for legislation to sell these necessaries, whatever they may be, to the inhabitants of the Commonwealth, and to any county, city, town or other municipal corporation therein. You will observe there is no grant of eminent domain to any other political division than the Commonwealth. It is the view of our committee that if, in time of war or any other stress, we ever should meet such conditions that the right of eminent domain, — the power to commandeer, so to speak (as an army commandeers everything), — should be exercised, then that power should be exercised by the Commonwealth, and by no subdivision. It is a very drastic power; in our view, it ought not to be exercised except by the Commonwealth. We assume that it would be exercised only under extraordinary circumstances. But if we go on as we have been for three years past, — or as the rest of the world has been for three years past, — engaged mainly in the business not of "making a living" but of making a killing, if that is to be the main business of the world, Heaven only knows what necessities may meet us here, as they have met the peoples of Europe. It is our belief that there is no danger in giving to the Commonwealth the power, that every army has, to take and distribute the necessaries of life. Such power may be sorely needed.

The next power, proceeding after the semi-colon that you find after the word "therein," is this: The Legislature "may authorize municipalities to buy and to sell to their inhabitants such necessaries of life, and to harvest and manufacture ice." That, you see, is a plain grant of new constitutional power, — bear in mind again that it is not legislative power, — of constitutional power to authorize municipalities (we left out counties intentionally, for the county is more a judicial unit than it is a trading unit) "to buy the necessaries of life and to sell them to their inhabitants."

Mr. Brown of Brockton: I want to ask the gentleman what is the meaning of the word "such?" Does that word relate to what the General Court has taken by purchase or otherwise, and does it authorize the municipality to buy and sell on its own account necessaries other than those that have been taken by the power of eminent domain? What is the intention of the committee?

Mr. Anderson: I think "such" means any and all of the necessaries of life. If there is any doubt about it, it ought to be put beyond doubt. My understanding of the purpose of the committee was that

the language "and may authorize municipalities to buy and to sell to their inhabitants such necessaries of life, and to harvest and manufacture ice," was intended to give to the Legislature a general power to grant to municipalities all trading powers in all of the necessaries of life, which would include food-stuffs, fuel, ice and other necessaries of life, whatever the Legislature might think them to be.

Mr. BROWN: I would inquire of the gentleman whether if you strike out that word "such," it would not have just the meaning he intends?

Mr. ANDERSON: Personally, not speaking for the committee on that matter, I should have not the slightest objection to striking out the word "such." I suppose you would have to substitute the word "the" in order to make your English good. Any amendment of that sort which the committee on, — I forget the name of it — which polishes us after we get through, — found necessary, I should find no fault with. But I will say to the delegate from Brockton that there is no doubt whatever, as I understand it, of the purpose of the committee to meet in that part of the resolution the situation disclosed in the two cases to which I shall briefly refer, known to most of the delegates. One is found in 155 Mass. 598. That is the Opinions of the Justices to the House of Representatives in 1892. I shall read only the very short head-note, which will sufficiently indicate the situation to make my point clear:

> By Field, C. J., Allen, Knowlton, Morton, & Lathrop, JJ. The Legislature has not the power under the Constitution, to authorize the cities and towns within the Commonwealth to buy coal and wood for the purpose of sale to their inhabitants for fuel.
>
> By Holmes, J. The Legislature has the power to give such authority.
>
> By Barker, J. The Legislature cannot authorize towns and cities to engage in trade merely that it may be better carried on; but may authorize them to deal in fuel, if the necessities of the people can be met only in that way.

Mr. Justice Holmes wrote an opinion of about eight lines in length, which is so pertinent to the situation, as we think it exists, that I shall read it. The question, you see, Mr. President and gentlemen, is the question as to whether this proposed use is a public use. Mr. Justice Holmes said:

> I am of opinion that when money is taken to enable a public body to offer to the public without discrimination an article of general necessity, the purpose is no less public when that article is wood or coal than when it is water, or gas, or electricity, or education, to say nothing of cases like the support of paupers or the taking of land for railroads or public markets.
>
> I see no ground for denying the power of the Legislature to enact the laws mentioned in the questions proposed. The need or expediency of such legislation is not for us to consider.

Now, that last sentence, like every word in that very short opinion, is very pertinent for us here. As it was not for the court there to consider the need or expediency of that legislation, so I venture to think it is not for us here now to consider the present need or expediency of this legislation, except in so far as present world conditions do indicate that that need is here, or shortly may be here, as to some or all of these matters. Just when, or under what circumstances, a power, — which has been so frequently needed that at least twice and I think three times within the memory of men now active, the Legislature has asked an opinion of the Supreme Judicial Court as to whether it might not relieve present necessities, — just when such a power as that should be exercised is for the Legislature, and the man

in this Convention who holds the worst opinion of the Legislature, whoever he may be, — not I, — must concede, I think, that the Legislature, if it is good for anything, is fit to deal with a question of that kind.

Again in 182 Massachusetts, page 605, the question was put to the Supreme Judicial Court as to whether there was constitutional power "to enact a law conferring upon cities and towns authority to establish and maintain municipal fuel or coal yards, or to purchase coal and wood for the purpose of selling it generally to their inhabitants or others at cost, at less than cost or at a profit." And again the Supreme Judicial Court in an opinion signed by Chief Justice Knowlton, Justices Morton, Lathrop, Barker, Hammond and Braley, said no. Mr. Justice Loring in a separate opinion reached, for all present purposes, pretty nearly the same conclusion, but on a somewhat different ground.

Such is the state of our present constitutional limitations with which we undertook to deal. The opinion of this committee was that the Legislature should be entrusted with the power to say when, to what extent and in what articles which were necessary municipalities should be authorized to buy and sell.

Now, I have passed to lines 10 and succeeding. There you will find an additional grant of power to the Legislature with relation to dealing by public bodies in the necessaries of life and in the means of distributing necessaries.

Mr. THELLER of New Bedford: I should like to ask the gentleman if in the word "fuel," or elsewhere in the first part of the resolution, the committee took into consideration the power of the Legislature to buy and sell gas or electricity; whether that is included in this resolution?

Mr. ANDERSON: The committee was of the opinion that there was not the slightest doubt of present power to buy and sell gas. There are already various municipalities within the State engaged in the business of furnishing gas; the present constitutional power to deal in gas and electricity is, as we take it, absolutely beyond question. So all those resolutions which came before us that dealt with what are called municipal lighting plants we regarded as being outside of the realm of arguable need.

A DELEGATE: I should like to ask the promoter of this measure if he would be willing to accept an amendment to his resolution inserting after the words "of life," in line 15, the words "to sell the same and dispose of the necessaries of life at actual cost of same to the inhabitants of said city or town."

Mr. ANDERSON: I think not. I do not believe that you can give that power to a municipality or to any other public body to be used effectively; and, at the same time, limit in your Constitution such public body to selling it *at cost*. Clearly they must face business conditions, if they go into business, just as any person or private corporation must face business conditions. It may be found advisable to sell at a profit. Presumably, under ordinary conditions, the Legislature would require a municipality or those engaged in that administration to attempt, at any rate, to sell at a profit, and only a moderate profit. But if legislation of that kind should be enacted to meet an emergency and afterwards conditions became normal and a municipality found itself with a lot of stuff on hand and the market had gone down, we

ought not to have constitutional limitation to prevent them from selling it at less than cost. Otherwise you would hamper the doing of that business; they must be left free.

Mr. BROWN: I want to ask, Mr. President, this question: Whether the word "or" in place of the word "and" would change the tenor of that resolution in this way? Whether or not, as it at present stands, it would not have to be a general proposition of which no one town could take advantage unless there was action by the Commonwealth, cities and towns? Whereas, if you had the word "or," it could be made presumptive by the Legislature that any one town or city could vote yes or no whether it would go into it or not?

Mr. ANDERSON: Where?

Mr. BROWN: It reads: "Commonwealth, cities and towns." Does that word "and," in line 12, connect the "Commonwealth, cities and towns," so that they would all have to go in or else no part of that combination could go in?

Mr. ANDERSON: The view of the committee was that the language used was adequate so that the General Court might authorize the establishment, maintenance and operation by the Commonwealth *or* cities *or* towns, — any or all. It was intended to be a broad general grant of power to the Legislature, and the Legislature, I take it, could enact its legislation in such form as to leave it either compulsory or optional. The word "and" it is suggested to me is used distributively. I think the construction is as I stated, but I should easily yield to the wiser judgment of others; I agree, if there is any reasonable doubt about it, it should be put in such form as to resolve that doubt.

Mr. AVERY of Holyoke: Does this resolution permit the sale of any of these things at less than cost, and if so, did the committee so intend that?

Mr. ANDERSON: I thought I undertook to answer that a moment ago, that so far as the grant of constitutional power was concerned there was no intent on the part of the committee to limit the power of the Legislature; my own view would be that to limit it (as I stated a moment ago), so that if a municipality was authorized by the Legislature to go into business to meet an emergency, and yet were prohibited from selling at less than cost, it might find itself with a lot of stuff on hand that it could not dispose of at all. And, to repeat myself again, if the Legislature authorizes a public body to go into business, it must meet business conditions, whatever they may prove to be.

Mr. CUSICK of Boston: Was it the intention of the committee to limit this power to times of emergency and distress?

Mr. ANDERSON: No, sir, it was not the intention of the committee in the resolution reported to limit the power of the Legislature, that wise body, to times of emergency and stress. Among other reasons which affected some, — and I am inclined to think all the committee, — was the reason that if we undertook so to limit the power and discretion of the Legislature we almost certainly would raise a question for litigation, — which perhaps would prevent the power from being exercised at all. What is an emergency? Nobody knows until the Supreme Judicial Court is compelled, — I say it with entire respect, — to make the last guess. Suppose somebody says: "There has been an emergency this year for coal;" the Legislature three months later

enacts a law under this resolution; but there is a nice little combination of coal companies and coal dealers who say: "This is no emergency. We are a set of philanthropists. We are distributing coal a great deal better than these public officials could." They go to the Supreme Judicial Court and raise the question whether there is an emergency.

Mr. CUSICK: And what would the Supreme Judicial Court say?

Mr. ANDERSON: It is very probable that pending that litigation it would be nearly if not quite impossible to exercise that power safely.

Mr. CUSICK: Is it not true that there are a number of cases similar to the ones that you have described which have been decided by the United States Supreme Court and by other State courts, in which it is stated that the question of emergency is for the Legislature, and not for the courts?

Mr. ANDERSON: I think that is so. But the question was raised in our committee, and as I now remember it there was a considerable difference of opinion, — we had some very good lawyers in the committee, — as to whether it was *conclusively* a legislative question; I hope some member of the committee will correct me if my memory is at fault. I think that we reached finally the conclusion that there would be serious danger of laying a foundation for crippling litigation, if it were undertaken to say that this power should be exercised by the Legislature only in times of emergency. I may add this, which influenced some of us (doubtless it would not influence the member who now asks the question); some of us thought the Legislature of Massachusetts could be trusted not to abuse a power of this kind. Others doubted that.

Mr. CUSICK: Just one more question in regard to this. What does your committee mean, or what is your conception of what the committee means, by the word "otherwise" in the fourth line of the article of amendment, in other words, where you provide that the Commonwealth may "take by purchase or otherwise?"

Mr. ANDERSON: That is the language which has been used I suppose in a thousand statutes.

Mr. CUSICK: No, no, but what does it mean in this statute?

Mr. ANDERSON: It means, take by eminent domain. You can go out and buy it, and if you cannot buy it you seize it; leaving the value to be determined by a jury, just as you do when you take land for markets or land for the State House or city hall.

Mr. CUSICK: What construction have you put on the word "purchase?" Would it not be the same as by eminent domain, as it is used in this resolution?

Mr. ANDERSON: The words "by purchase or otherwise," as I understand, are the stereotyped phraseology for a grant of eminent domain. If the delegate from Fall River (Mr. Morton) is not of that opinion, change the expression. But as I understand it, practically all the statutes which have been enacted intended to grant eminent domain, since the time when the memory of man runneth not to the contrary, have used those four words. I beg to ask the learned justice of the Supreme Judicial Court (Mr. Morton) if I am not correct.

Mr. MORTON of Fall River: As I am rather opposed to this measure as it at present stands, I think I had better not answer the gentleman's question.

Mr. Herbert A. Kenny of Boston: Trying to find the efficacy of this measure, I should like to know what the gentleman would do in case the milk contractors refused to sell milk or the oil contractors refused to sell oil under this resolution, and if said oil contractors or milk contractors were outside the State what would this resolution do and what measures would have to be taken for the State?

Mr. Anderson: It is quite clear that the Commonwealth of Massachusetts cannot legislatively deal with interstate commerce or with production outside the State, or with anything until it comes within the jurisdiction of our own law. Very many abuses from which we suffer, whether among milk producers and distributors or oil producers and distributors, are far beyond the reach of any power that may be granted to the Legislature of this Commonwealth. Of course the Commonwealth and its subdivisions can be authorized to contract for necessaries outside the State.

Mr. Bryant of Milton: I should like to ask two questions of this gentleman, and the first one is whether or not in all those statutes which have in them the words "purchase or otherwise," there is not invariably a later provision which provides for compensation in case it is taken otherwise than by purchase.

Mr. Anderson: That question was considered by the committee, and it was the opinion of the committee, — and I think we looked up some statutes at that time and found that the answer to the gentleman's question was no, — it was the opinion of the committee that the obligation to pay reasonable compensation was necessarily implied and that it was not necessary to put it in. It was left out because we regarded it as necessarily assumed.

Mr. Bryant: I would ask further whether that assumption was not on account of the provisions of our Constitution, and whether this may not do what a statute cannot do, to wit, repeal the previous provisions in the Constitution as to compensation?

Mr. Anderson: Of course it is conceivable. Some of you appear to fear it. The foundations of all our liberties including the right of property and the right of life may be destroyed as the result of measures reported by this Constitutional Convention. But for my part I cannot conceive a Commonwealth of Massachusetts in which property will be taken for public uses without the existence of an obligation to pay for that property, and I do not regard it as necessary to repeat, in various grants of power to the Legislature, the constitutional obligation to pay for that which is taken for public uses.

Mr. Bryant: I do not want to take too much time. There is one more question I should like to ask for information. Assuming that the Commonwealth of Massachusetts should go into business, assuming that the Commonwealth of Massachusetts should purchase certain of these food-stuffs for the benefit of certain towns or certain individuals and a loss should result from that transaction, would that loss be borne by those towns or would it be spread all over the Commonwealth which was not interested in that particular purchase?

Mr. Anderson: That again would be a question entirely for the Legislature to deal with when it exercised all or any part of the powers which this resolution undertakes to give to the Legislature. There is an additional answer to the question last asked by the delegate from Milton. Under the fourteenth amendment of the Constitution of the

United States, and, indeed, under the fifth amendment of the Constitution of the United States, no persons can be deprived of their property except by due process of law, and no State could enact a law as long as the present Federal Constitution exists which would take from the citizens their property, except for public purposes and paying a reasonable compensation therefor. That itself, entirely apart from our own domestic guarantees, is an adequate answer to the question raised.

Mr. WASHBURN of Middleborough: Like the gentleman from Boston in the third division (Mr. Cusick), I, too, am concerned about the precise scope of the word "otherwise", in the fourth line. Accepting the gentleman's explanation of what the committee intended, I ask him whether he would be willing to strike out the word "otherwise," and insert in lieu thereof the words "by the power of eminent domain," so as to read, "take by purchase or by the power of eminent domain"?

Mr. ANDERSON: My understanding of the stereotyped form of legislation is that no statute with which I am familiar says "by right of eminent domain." I think I am correct; but there are many lawyers here who know a great deal more about it than I, very many of them, — I bow to a few. If they want to put in "by right of eminent domain," I do not object. But I venture to think that I myself must have read and perhaps dealt with many scores of statutes in which this precise language is used; I never before heard it questioned, in more than a quarter of a century that I have been at the bar, that the words "by purchase or otherwise" were not proper phraseology by which to give the power of eminent domain.

Mr. WILLIAM S. KINNEY of Boston: The question I want to raise, Mr. President, is whether the chairman of the committee will accept, where the language appears, in line 4, "take by purchase or otherwise," the substituting of the words "purchase or take by eminent domain," so as to read, "The General Court may authorize the Commonwealth to purchase or take by eminent domain."

Mr. ANDERSON: My attention is directed to Article XLIII of the amendments to the present Constitution which provides that the General Court shall have power to authorize the Commonwealth to take land and hold, improve, subdivide, build upon and sell the same; and so on. Now, I do not believe you need to say "take by purchase or otherwise." If you simply say "take," probably you have granted the power. My understanding of those words always has been this: That when a public body, by the right of eminent domain under this grant, took "by purchase or otherwise," it could go out and trade, settling at the time of or before the taking, the consideration to be paid to the then owner; that if it could not agree with the owner of the property as to the value thereof it seized it in such manner as is provided in the machinery of the legislation; this results, as a matter of constitutional right, in remitting the owner to a trial by jury for the assessment of damages.

I think perhaps we would get on faster, if there is any doubt about that language, if we allow the committee on Form and Phraseology to make any rearrangement or revision of it they wish; this they may do so far as I am concerned. What I am interested in is the power itself. We worked over it quite a while, and, as I say, we had some very wise men on our committee.

Mr. Loring of Beverly: In line 5 in reference to the words "other necessaries of life," in the opinion which was quoted by the gentleman, real estate was referred to. Would the gentleman consider that "other" would entitle a city or town to deal in houses as a necessity of life?

Mr. Anderson: The answer is, I think, no, but our committee has reported another amendment which will authorize, if it is submitted, the dealing in houses. If the gentleman from Beverly will look at No. 320, he will find there the results of our committee's consideration of what power should be granted with relation to homes.

Mr. Loring: The question is whether real estate is raised in this measure, not in No. 320, and I think we should like to know definitely whether they mean to raise all the necessities of life, such, for instance, as clothing and houses and things of that kind, by the word "other" in line 5.

Mr. Anderson: I think it was the opinion of our committee that No. 318 was not broad enough to authorize the Legislature to permit a public body, whether the Commonwealth or any subdivision thereof, to go into the business of furnishing homes as necessaries. It was partly for that reason that we reported No. 320, which does provide that the General Court shall have power to authorize the Commonwealth, and the cities and towns thereof, to take land and to hold, improve, subdivide, build upon, lease and sell the same for the purpose of relieving congestion of population and providing homes for citizens. That is a separate grant of power, and I think in the contemplation of our committee not included in No. 318.

Mr. Cusick: I should like to direct the gentleman's attention to the fact that in resolution No. 320 you limit the power. To that extent No. 320 differs entirely in the basic power which you give the Legislature in No. 318.

Mr. Anderson: If the gentleman looks at the last part of No. 320 I think he will find that is not so; and in that connection, as we are digressing from No. 318, which, as I understand, Mr. President, is the only thing before the Convention, although I am quite willing to discuss No. 320 for the purpose of showing the limitations in No. 318 —

Mr. Cusick: My question was directed at this time only to the fact that your committee limited the power in a kindred resolution, No. 320, but did not limit it in No. 318.

Mr. Anderson: The language "and providing homes for citizens" at the end of No. 320, in the opinion of the committee, was broad enough so that the Legislature could go outside the necessities of relieving congestion. The delegate perhaps has in mind the forty-third amendment of the present Constitution, — I read a part of it a moment ago. That provides that the General Court shall have power to authorize the Commonwealth to take land and to hold, improve, subdivide, build upon, lease and sell the same for the purpose of relieving congestion of population and providing homes for citizens:

> Provided, however, that this amendment shall not be deemed to authorize the sale of such land or buildings at less than the cost thereof.

Now, what we did in No. 320 was to amend the present forty-third amendment, which the Convention will observe is intended to be repealed by No. 320, by inserting after the word "Commonwealth"

the words "and the cities and towns thereof"; and also by striking out the proviso which would prohibit the sale of any of this land "at less than the cost thereof;" which would leave the Commonwealth or the public body that might embark in that business hopelessly saddled with anything that they had purchased unwisely or which had gone down in value or price because of conditions which could not have been fairly foreseen, — thus making, as we thought, the present Article XLIII nearly if not quite unworkable.

Mr. PARKER of Lancaster: I would beg to inquire of the gentleman from Brookline whether he entertains any apprehension, however remote it may be, that, in the event of legislation under the permission of the resolution now under consideration declaring some condition of public necessity, exigency or emergency as warranting the taking of property under such circumstances, a contention, — and a serious contention, — might be made that the taking was by virtue of authority under a police regulation rather than under the exercise of the power of eminent domain. In order to avert such apprehension, which I admit would be remote, would he not consent to the insertion of words declaring that the taking should be in the exercise of the power of eminent domain, whereby that doubt, remote though it were, might be eliminated?

Mr. ANDERSON: I am not quite sure that I understand the exact scope and purpose of the delegate's question. We did consider in the committee this: I suppose that under the police power government may take property without compensation. It was not the purpose of our committee to extend into this domain the police power so as under conceivable circumstances to authorize the Commonwealth to take a citizen's property without compensation. It was the purpose of the committee to extend the business-doing power of the Commonwealth and of the subdivisions thereof if and when the Legislature thought it wise to exercise that power.

I, therefore, if I understand the delegate's question, would say that if in any reasonable view of this resolution it might be held a grant of power to extend the police power (which would not necessarily involve compensation), have it reframed so as to eliminate that doubt.

Mr. PARKER: I do not desire to take the time of my honorable friend, but I desire to assure him that my question was put wholly for the purpose of gaining an interpretation of this statute and possibly eliminating a doubt in my own mind, for I am not opposed to the proposition that is embodied in this measure, but I do fear the measure, unless there is plain phraseology that would exclude forever any reasonable or possible contention that the taking was in the exercise of the police power. Perhaps your question has fully answered my doubt.

Mr. ANDERSON: I only repeat that if there is reasonably arguable doubt as to the construction to be put upon this grant, I should be heartily in favor of removing that doubt and should welcome the most critical and careful scrutiny of the delegate from Lancaster on that proposition before we have finished the consideration of this proposition. Now, Mr. President, I turn again to the latter part of the resolution.

The General Court may authorize the establishment, maintenance and operation by the Commonwealth —

"and or" you may put in there, as some careful lawyers do when they are drawing wills, —

. . . and or cities and towns, of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses and other like means for producing, selling and distributing the necessaries of life.

Now, that is not very long but it is pretty pregnant. Note that you have in the first place the Commonwealth *and* the municipality. There is no grant of that kind to the county. It was not the opinion of the committee that counties should go into that kind of business. It was the opinion of the committee that it was desirable that the Legislature should be permitted to put the Commonwealth into any business that it thought desirable, provided that business was a "necessary." We put before the committee, in order to test the powers which would be given by the amendment of the delegate from Quincy, the question as to whether we wanted to authorize our public bodies to go into the business of "dealing in Easter hats." I was not in favor of it. Some members of the committee were in favor of it. Some of them even argued that Easter hats were articles of prime necessity in their families and there ought to be some way of reducing the price. But passing the persiflage, — the conclusion that we reached was that public business in the necessities of life, at the present time, should be the limit of constitutional power, even to an almost all-wise Legislature. Then we put in the word "market." There is no doubt that there is present power on the part of the Commonwealth to go into the market business; but out of excess of caution, lest some captious gentleman should hereafter argue that *exclusio unius inclusio alterius* was operative here, we put in "markets." Fuel and coal yards fell within the condemnation of the present outstanding decisions of the full court; that, therefore, is an additional grant of power. Elevators never have been ruled on. Probably elevators, under our present Constitution, would fall outside the limits. At any rate, they might fall outside the limits, as do fuel and coal yards. Warehouses might be argued to be either within or without. Canneries might fall in the same category. Slaughter-houses we formerly thought to be public uses. Whether they would be held to be so now, under the modern method of distributing meats, ought not to be left to litigation; so we put them in. "And other like means for producing." You will observe that it is not limited to buying, selling and distributing. The word "producing" is in there. You can go right into the business of running a market-garden, a shoe factory, or anything else which is the production of a necessity, selling and distributing the necessaries of life. Now, that is a very large additional grant of power to the Legislature as compared to the power that it now has.

Mr. Theller of New Bedford: I understand that lines 14 and 15 of the resolution provide for the establishment and operation of agencies for producing, selling and distributing. I should like to ask the gentleman if that includes the establishment of systems of transportation.

Mr. Anderson: It is plainly within the present constitutional power of the Legislature to provide all kinds of transportation, as we assumed. Railroads, railways, highways, bridges and the operations of vehicles thereon we understood to be so plainly within the present

recognized powers of the Legislature that there was no need of mentioning them in this proposed amendment. As to shipping, I think that was given no consideration. Whether or not it would be held under our present Constitution that the Commonwealth might establish a line of steamboats to run from here to Norfolk to bring up coal, we did not consider. A ferry across our own waters undoubtedly is within the present Constitution; no doubt about that. We can operate ferries across Boston harbor or across a river. Anything which is a highway is within the present power.

Now, Mr. President, I think I have stated the gist of the considerations which affected us. We had before us propositions which were somewhat broader, which would authorize the Commonwealth and municipalities to go into any and all kinds of business. We thought it should be limited to necessaries. We did not think it should be limited to times of emergencies, for the reasons that I have stated. We thought also that the Commonwealth should be given the grant of eminent domain, treated as an army is treated. We thought that the general broad power should be given under which the Commonwealth might delegate the power of producing, selling and distributing to cities and towns, but not to counties. Mr. Clapp of the committee dissented on some part of the resolution, I think, but I am not quite sure.

Mr. CLAPP of Lexington: This subject, as perhaps you already have learned by the questions that have been sent back and forth, is one of really great importance. To my mind there is nothing on your whole docket, with the possible exception of the I. and R., which is of so great importance as this and deserves more serious consideration. The conclusions reached by the committee on Public Affairs, I may say in passing, were not marked with that high degree of unanimity which characterized the decisions made by the committee on Bill of Rights. We had a very pleasant time together, but there were many and considerable differences of opinion, and that statement holds true with regard to this particular resolution. So that when the gentleman who has just taken his seat spoke about what he did, or spoke about the conclusions reached by the committee, please understand that very frequently those expressions should not be taken as including every member of the committee.

Mr. ANDERSON: I should like to inquire whether the last statement about agreement is to be taken to indicate that he or any other member of the committee dissented on this particular resolution?

Mr. CLAPP: I did not register any formal dissent. But the gentleman will recall the statement made in the committee that every single one of us reserved his right to express his individual opinion upon this and every other measure when reached in the Convention. You may recall, too, that when, some months ago, the resolution relating to natural resources was reached the statement was made on this floor, certainly by me and I think by the gentleman from Worcester (Mr. Hobbs), now sitting on my right, that it was the general understanding of the committee on Public Affairs that a member had the right to oppose any resolution reported by the committee although at the time in the committee he had not made a formal dissent or given notice of any minority report.

Now, as I say, this is a subject of great importance and I apprehend

that in this Convention we are going to develop the same differences of opinion, and perhaps to an even greater degree, than those which obtained in the committee.

My friend, the delegate from Quincy (Mr. Adams), who was sitting here a moment ago, thinks that this resolution is too narrow, that it ought to be greatly broadened. On the other hand, I, while sympathizing with the main purpose, think it is too broad, and I want to see it narrowed. And before I finish the brief remarks which I propose to make on the general subject I shall offer an amendment.

Now what is the main purpose of this resolution? What does it grow out of? It grows out of the fear possessed by a great many people that in times of war or other public distress coal and fuel and food-stuffs, — those things which are of such a nature that they may form the subject of monopoly, — may fall into the hands of speculators so that the interests of the poor people may suffer unless the State has power to seize those articles and sell them, either with or without a profit, to people who need them. I am willing to stand for a measure which will afford the people protection against a calamity like that. But nobody appearing before the committee or discussing the question anywhere else so far has referred to any exigencies that ever occurred in the past except that of there being an insufficient supply of coal. Possibly some one did say that there might be a shortage of some kind of food products, like potatoes or onions, so that there may be the same need of protecting a community against speculations in those articles.

Now I think we are all agreed upon the general proposition that it is bad policy for cities and towns as a rule to enter into competition with private industry. There are certain well established exceptions, exceptions that are based upon special and peculiar considerations. It is settled that cities and towns may properly own and operate the public waterworks; that, if the citizens think best, they may own and operate the lighting plant in the town or city. I am willing for one to go a step further and so amend the Constitution that cities and towns may be authorized by the Legislature on occasions to enter into the business of dealing, not broadly in the necessaries of life, but in fuel and in food-stuffs, and that is where I would draw the line. I think that is going quite far enough. The gentleman from Brookline who has just taken his seat (Mr. Anderson) has said a great deal about the advisability of giving the Legislature the power. He says: "You can trust them; give them the broad power and they will not exercise it in any unreasonable fashion." Well, now, gentlemen, that argument leads to throwing down all constitutional restraints upon the Legislature. That is the logical tendency of it. If there is a certain power or function which we agree the State never ought to exercise, I say, so surround it with constitutional restraints or limitations that the Legislature may not exercise it; and I stand here to say that we ought not to open wide the gate and broaden our governmental functions so that it will be possible for the Legislature to authorize a city or town to go into the business of manufacturing or dealing in boots and shoes in competition with an individual or a partnership or a corporation. I do not believe in that and I should hope that a majority of the members of this Convention do not.

Mr. HARRIMAN of New Bedford: I should like to ask the gentleman

from Lexington who, in the course of his remarks, has stated that he believes in this measure only when necessity arises, if he does not think that in our great industrial centers, where men and women are forced to work for low wages, and the supply of fuel and food and other things which are necessary for them is in the control of a few men, — if he does not believe that that necessity exists and always will exist so long as those two things obtain in our industrial life?

Mr. Clapp: In answer to the gentleman, my idea is that, basing my judgment upon experience and what we may observe of the past, there is not the slightest danger of any monopoly in the hands of private individuals or agencies of necessaries of life in the broad sense, meaning boots and shoes and clothing, neckties and collars and handkerchiefs and what not. I recognize the possibility of there being a monopoly in coal and wood and food-stuffs, although I think that is extremely unlikely, and I cannot see how a city or town is going to get coal if individuals cannot get it. But recognizing the possibility I am willing to stand for a constitutional amendment similar to the one that has been proposed, but in a much restricted form and scope.

As this resolution stands it is competent for the Legislature, so far as any constitutional restraints are concerned, to pass a law authorizing cities and towns to go into the grocery business and to set themselves up as dry-goods merchants; and I think the resolution is broad enough to authorize a law which would permit a city or town to manufacture boots and shoes. Boots and shoes are necessaries of life, and toward the end of this resolution is a clause authorizing municipalities to put into operation means for producing necessaries of life.

Mr. Brown of Brockton: How far would you extend the principle that a town, in order to upbuild itself, may take a part of its money for the purpose of encouraging a manufacturer to come to the town or taking the money for the purpose of having him come without such purpose?

Mr. Clapp: That question is a little remote from the principle which underlies the measure under consideration. All I can say is that in general terms I never favored the expenditure of much money by a town to bring manufacturing plants to it. I think that every community has or has not certain natural advantages for manufacturing, and if it has natural advantages that is a good point and the industries will come; if it has not such advantages in a marked degree, it is a foolish expenditure of money to give them a bonus for coming or to exempt them from the payment of taxes in consideration of their coming.

As I have said, under this measure as it stands, the Legislature may pass a law authorizing the town in which I live to go into the grocery business and to go into it on a basis which might yield a profit, or they might sell goods at cost, or they might sell goods at a loss. Now it is perfectly obvious, it seems to me, that you are putting a very unjust burden on the grocery men already there when you subject them to a competition with the town, with the possible result of their having to pay increased taxes in order to be put out of business; for certainly they might be put out of business, if it was conducted at a loss.

Mr. Donovan of Springfield: I should like to ask the gentleman who is speaking if his objection to this amendment is based upon his recog-

nition of what he thinks is a fact, that it would interfere with individual rights. Is that your objection?

Mr. CLAPP: That is one objection; it would interfere with individual rights in a case like that of which I last spoke, — a town going into the grocery business or dry-goods business in competition with merchants already engaged in that line of business.

Mr. DONOVAN: The reason for asking that question was that I wanted to find out if his objection to that amendment was based upon the same reason that the gentleman from Waltham (Mr. Luce) had in opposing the initiative and referendum. In so opposing the initiative and referendum he made this statement: "That people consider the common welfare, not individual rights." I take it that the gentleman who is speaking objects to this amendment upon the same grounds.

Mr. CLAPP: Of course we all know there are times when individual rights ought to give way in order to promote the general welfare. But in the case to which this resolution appertains it seems to me that there is no need of curtailing what I have described as the rights of the individual. I do not believe the common welfare would be promoted thereby. It is my experience that municipalities, as their affairs are conducted, do not and cannot carry on business, — private business, — with the same economy and efficiency as that which characterizes the conduct of business by private agencies. And if the towns under authority conferred by this or a similar resolution should go into the business generally of selling necessaries of life, using that term in the broad sense, it seems to me that through the increased burdens of taxation which would be likely to come in consequence, the communities as a whole would not make any gain, while, as I have indicated, the rights of individuals might be infringed.

Gentlemen, this is a Socialistic proposition, standing in the broad form in which it is now put; and it might constitute a direct and considerable step toward the establishment of State Socialism.

Mr. Francis N. Balch of Boston moved the amendments cited at the beginning of the chapter.

Mr. CLAPP: Now, gentlemen, personally I would not have much objection to that amendment, and yet it is an unnecessary and I think rather a foolish one. I gave a good deal of consideration to the question, — I will not arrogate this to myself, — notwithstanding our differences of opinion I think we all gave a good deal of consideration to the question whether anything would be gained by referring to a stress or exigency as that suggested resolution does. It is a curious fact that every man who appeared before our committee in advocacy of this or a similar measure would begin by saying that there were likely to be great emergencies during which it would not be possible for people to get their necessaries of life through the ordinary channels. I believe every speaker put it on that ground, that there were likely to be these emergencies.

Mr. JAMES J. BRENNAN of Boston: As a member of the committee which heard these different propositions I should like to ask the member who now rises and objects to the report of the committee if that remark which he says almost every man presented, that it would be hard to get the necessaries of life, was anything more than the ordinary comment which it would be natural for people to make with the

present advance in prices as they are and have been for the last year in this immediate vicinity.

Mr. Clapp: I did not understand those gentlemen to be referring to that kind of an emergency. I thought they were talking about a shortage of supplies due most likely to the corralling of those things in the hands of speculators. Now, as I have said, the speculators might corral the coal, they might corral the food-stuffs, but I do not see how they could corral all the dry-goods and groceries.

To come back to what I was saying, I say that we all considered the question whether it was practicable to tie up this authority in some way to the existence of an emergency. I think that we came to the conclusion that it was not; if you attempt that you must do it in one of two ways: Either you must put it in the form in which it has been put in this last proposed amendment and say whenever in the judgment of the Legislature the exigency exists, — and that is what this practically comes to; or else you must put it in such shape that the question of the right to exercise the power will depend upon the existence of the exigency as a matter of fact. Well, now, obviously you do not gain anything by saying that the power may be extended when in the judgment of the Legislature there is an exigency, or that they may do it in an exigency, with the provision that the Legislature shall be the sole judge of the exigency. If put in that way it does not serve as a limitation. If the Legislature wants to do it, it will; and if it does not want to do it, it will not. That kind of a limitation I think the chairman of our committee very picturesquely described as a "rhetorical limitation"; it does not amount to anything.

Now you have the other kind of limitation. If you limit the right to do this to the existence of an exigency as a fact, then you have a question that is reviewable by the court, and I think with the matter put in that way you might sometimes get into a difficult and involved situation. A city or town, believing that the exigency as a fact existed, might make contracts and incur obligations only to find later on, after the question of the exigency had been litigated, that it did not exist; and you can readily see what great embarrassment might follow. So that, gentlemen, I say that, as a practical matter, you had better wipe out all reference to exigencies or stresses or calamities or what not, and confer whatever authority you do confer in straight, unqualified language, as does the resolution to which the gentleman from Brookline has just spoken; and that you should simply look out and see that you do not make the scope of it too broad so as to authorize municipalities to go generally into commercial business in competition with private owners.

Messrs. Clapp of Lexington and Bigney of Boston offered the amendments cited at the beginning of the chapter.

The debate was continued Thursday, September 20.

Mr. Samuel W. George of Haverhill offered the amendment cited at the beginning of the chapter.

Mr. Clapp of Lexington: When we adjourned yesterday I was giving some reasons why I thought that the resolution, in the form in which it was submitted by the committee, is altogether too broad. I had nearly concluded the remarks which I intended to make, and I shall not much longer tax the patience of the delegates.

I pointed out the fact that the resolution is so broad as to enlarge tremendously what have been heretofore legitimate governmental functions. The Supreme Judicial Court of this State, when answering the question whether it was lawful for the Legislature to provide for the dealing in coal and wood by the different municipalities, said that one of the leading purposes of the Constitution of Massachusetts was to protect business men, private individuals, in the exercise of their legitimate calling, — was to protect them in conducting such kinds of business as ordinarily had been conducted by private enterprise when the Constitution was adopted.

Let me read the exact words which the court used:

> The object of the Constitution was to protect individuals in their rights to carry on the customary business of life, rather than to authorize the Commonwealth or the municipalities to undertake what had usually been left to the private enterprise of individuals.

Now, it is proposed to open wide the gate and to give the Legislature the power to authorize the Commonwealth and the municipalities to enter into competition with private enterprise so far as the necessaries of life are concerned. But, mind you, the term "necessaries of life" means, in this day, at least, practically everything that is sold in the grocery store or in the dry-goods store; and, I think I may add, in a boot and shoe store.

Now, I submit that we should be very careful, before adopting any such wide open proposition as this, to see that there is some public necessity for it. Past experience in this Commonwealth has not indicated the necessity for any such authority on the part of the municipalities except in the one particular case of fuel, — coal and wood; and in my judgment, in adopting some constitutional provision giving a little more liberty in this general matter, we should not extend it beyond fuel and food-stuffs. We should permit nothing to fall into this category of authorized dealings except those things which are of a nature such that possibly they may become the subject of a monopoly. I think you cannot say that, gentlemen, as to the general necessities of life.

Let me call your attention next to the fact, — it is not perhaps of great significance, but it is some, — that there are very few if any States in the United States which have gone as far as it is proposed to go here. I know that it is rather a dangerous argument to refer to what other States have done or are doing. That argument applied to the judiciary, in order to determine whether it should be appointive or elective, would not operate, as I think, to our advantage. But, still, it is worth while to note briefly what has been done elsewhere.

As far as I can ascertain, gentlemen, the State of Arizona is the only one that contains a broad, wide open provision upon this subject. The Constitution of Arizona contains a provision to the effect that the State and each municipal corporation shall have the right to engage in industrial pursuits. That is the only State, so far as I can find, in this Union, which ever has adopted anything of that sort.

There are several States, like South Carolina, which give the Legislature power to authorize municipalities to sell intoxicating liquor, and under that provision have been enacted so-called dispensary laws. In South Dakota there has been adopted recently by the Legislature an amendment which permits the authorizing of cities and towns and

the State, for the purpose of developing the resources and improving the economic facilities of South Dakota, to own and conduct proper business enterprises. I am uncertain whether that has been adopted by the people or not, but I assume that it has been. But, mind you, even there a limitation is put upon the Legislature, in that no money shall be appropriated in furtherance of that purpose except by a two-thirds vote in each branch of the Legislature.

I am informed, though I cannot prove it from the records, that the State of North Dakota has adopted, or is proposing to adopt by submission to the people, a similar amendment; but the power cannot be exercised except by a vote of two-thirds of each branch of the Legislature.

Mr. ANDERSON of Brookline: I interrupt to gain the opportunity to correct a statement that I inadvertently made yesterday. One of the morning papers confirms my memory that I stated that the fair construction of the last half of the resolution was that the Legislature might authorize the towns to go into the market-garden business. That statement was made in response, as I remember it, to a question asked me concerning the meaning of "like" at the beginning of the fourteenth line. My memory was at fault in that answer. I was stating something which was considered in the committee but not adopted in the committee. I beg now to ask the Convention to note what the real operation of the last sentence is. I shall take only a moment.

> The General Court may authorize the establishment, maintenance and operation by the Commonwealth, cities and towns, of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses and other like means for producing, selling and distributing the necessaries of life.

The Convention will note that all of those things enumerated are in the nature of marketing or distributing facilities, except that in canneries you have a species of manufacturing process added to the marketing and distributing process. And because of the fact that we feared putting in canneries (which are absolutely necessary in order to enable the collection and preparation, and subsequent proper distribution, of a lot of small fruit and vegetable stuff, — which we hope will be produced in the future in much larger proportions than it has been in the past) might be improperly limited, we inserted the word "producing." The functions of some of the enumerated distribution facilities, — fuel and coal yards, elevators, warehouses, canneries and slaughter-houses, — may fairly be deemed to involve a certain producing function.

Now, the word "like" before the word "means" was intended, as I now remember, in the result of the deliberations of the committee, to limit the activities of the Commonwealth and of the municipalities under that sentence to means of distribution and of merely incidental production, — like the preparation in the cannery, — and not to authorize the Commonwealth or the municipalities to embark generally in production. That was our conclusion; I misstated it yesterday. I thank the gentleman very much for his courtesy in allowing me to correct my error.

Mr. CLAPP: I was just showing you that there are probably only three States in the Union at the most where it would be competent for the Legislature under their Constitutions to permit cities and towns to

enter into the business under any circumstances of selling dry-goods and groceries, and boots and shoes, and such necessaries of life, in competition with private enterprise. Even in Oklahoma, which is supposed to have about as broad a Constitution as any State in the Union, I doubt whether this thing could be done. That Constitution does authorize cities and towns to engage in those kinds of business which require for their exercise a franchise from the municipal or State authorities. Under that, of course, cities and towns can operate, as they can almost everywhere, public utilities, — railways, electric light plants, and the like, — but a franchise is not required from the cities or the towns to carry on an ordinary commercial business; so I infer that even in Oklahoma it would not be constitutional to permit towns to engage in the sale of commodities in competition with private agencies.

In South Carolina there was adopted recently an amendment authorizing cities to issue bonds for a public market, but an examination of the facts shows that this refers only to the construction of a market-place and does not cover the business of running that market or buying and selling commodities in it.

Now, there may be found in a discussion of this general question by the Supreme Court of Maine something that I think is rather illuminating, as showing what should be the principles to govern in cases of this kind. The Constitution of Maine is very like that of Massachusetts, — at least, so far as this general subject is concerned, — and under it the Supreme Court of that State reached a different conclusion from that to which our own courts came in regard to the constitutionality of a law permitting cities and towns to establish coal yards. The Maine Legislature passed a statute authorizing cities and towns to maintain a permanent wood, coal and fuel yard for the purpose of selling at cost wood, coal and fuel to the inhabitants. That statute the Supreme Court of Maine held to be constitutional. The court summarized in the following fashion the conclusions which were reached by our own Supreme Judicial Court:

> 1. That it is beyond the power of a municipal corporation to engage in the sale of commodities which are and can be easily conducted by private business concerns in competition with one another, and which can be sufficiently regulated thereby. In this we most heartily concur.
> 2. That the sale of fuel falls within this class of commodities and there is no necessity why cities and towns should undertake this form of business any more than many others which have always been conducted by private enterprises.

"Here," says the Maine court, "we differ." The court then proceeds to lay down two tests which should be applied in determining what is and what is not a proper governmental function in regard to this general question. They say that the first test is whether the subject-matter or commodity is one of public necessity, convenience or welfare. Fuel clearly comes within this category. The second test is the difficulty which individuals have in providing it for themselves. The causes of this difficulty may vary, but if there is a difficulty approaching an impossibility under any circumstances, then the test is met.

The court then proceeds to say that so far as coal is concerned, it is a matter of history, of which the court cannot fail to take cognizance, that there has been great practical difficulty in getting, at times, a sufficient supply of coal, and that that difficulty has resulted in great

hardship to the poor people. They say that under modern conditions the mining and transportation and distribution of coal have fallen into such few hands as to bring a real danger of monopolistic control, and that therefore it is proper and reasonable that the Legislature should have the power to pass laws such that in times of great stress or emergency the coal supply may be seized. And, as I have said in what I already have stated to the Convention, I am going to stand for enlarging this category of authorized dealings by putting into it food-stuffs in addition to fuel. But that is as far as I am willing to go.

Mr. Brown of Brockton: I should like to ask the gentleman this question: Suppose the Commonwealth of Massachusetts issues a charter which is so broad that it may acquire a monopoly of a necessary of life. The State issues that charter and men proceed under that charter to acquire and hold these goods. As, for instance, you have at the present time a holding company which holds in charge all of the street railway companies. Now, in the absence of some such provision as is reported by that committee, how will the Legislature propose to deal with property? To what extent may property go in enforcing its demand against the other natural right of a man to live? Where do you draw the line between the two?

Mr. Clapp: It seems to me that there are really a good many questions involved in what the gentleman has just stated. The question which he asked at the beginning of his remarks, as I understood it, was this: Suppose the Legislature should authorize the incorporation of a company with such broad powers that it might monopolize some necessary of life. What would happen? My answer to that question, Mr. President, is that in my opinion such a charter as that under the existing Constitution would not be valid.

Mr. Brown: I should like to ask the gentleman, then, — how does he account for the existence, for instance, of the Massachusetts Electric Companies, which is a holding company and which has a monopoly of a portion of street railway transportation? Why does that come into existence?

Mr. Clapp: I do not understand that the Massachusetts Electric Companies is a monopolistic combination. In the first place, it is not a corporation at all; it is an arrangement under which the owners of the stocks and bonds of sundry street railway companies in Massachusetts have put them together for management in the hands of trustees, who issue, as representing those securities, certificates of interest.

Mr. Brown: Continuing that line, — they issue stock certificates to the extent of $39,000,000 on a basis of $23,000,000 stock of the Bay State Street Railway Company where there is only $7,000,000 of equity, according to their own expert. Now, they proceed to demand of the Commonwealth that $23,000,000 of stock shall be remunerated. Certainly transportation is one of the necessaries of life. Now, wherein can you check that Massachusetts Electric Companies in its demands as owner of the Bay State Street Railway Company's stock?

Mr. Clapp: I do not understand that the Massachusetts Electric Companies have any justification for demanding, or that they do in fact demand, the right to earn a return or dividends upon the aggregate amount of these trustee certificates. According to my informa-

tion, that is not true. But the companies, — the several companies which together constitute the Massachusetts Electric Companies, — are each and every one of them right under the thumb of the Public Service Commission, or the Board of Gas and Electric Light Commissioners, whichever it may be, and are entitled to earn a fair return upon only the amount which they have invested in their properties. And according to my view, the public interest is scarcely affected by the number of pieces of paper which these trustees issue to represent the stocks and bonds which are in their hands.

Mr. ANDERSON of Brookline: I want the gentleman to make a little clearer, if he will, his notions about unconstitutional grants of corporate charters. The delegate from Brockton a moment ago asked him what he would do, or something to that effect, if the charter of a corporation were granted in broad enough terms so that it got practically a monopoly of some of the necessaries of life. I understood the gentleman to reply, in substance, that such a charter would be unconstitutional. Now, I should like to know whether it is unconstitutional under the Constitution of Massachusetts as it now is, as we propose to have it, or unconstitutional under the provisions of the Federal Constitution. Or whether it falls into that beautiful category of unconstitutionality that I found the other day in a decision rendered by the police court judge of Springfield thwarting the recent attempt of the Commonwealth of Massachusetts to regulate the jitney traffic, — laying down in broad and general terms that anything in the nature of an ordinance or a statute which was unreasonable was unconstitutional, — which, being interpreted, meant anything that did not *appeal to him* as reasonable was unconstitutional. Now, I should like to know what the gentleman's views are of the unconstitutionality of a corporation charter which might give what we now have pretty nearly in effect, — an essential monopoly, — for instance, in the ice business in a large part of the Commonwealth, and very easily in contemplation within the entire Commonwealth.

Mr. BOSWORTH of Springfield: As a member from Springfield I wish in a slight degree to correct the statements of the gentleman from Brookline. As I recall the facts in Springfield and the judge's decision as it was rendered by him, the legislative authority that was granted to the city councils of the State was to pass certain reasonable ordinances. He found, not that the statute was unconstitutional, but that the ordinance that was passed was not reasonable, which, as I understand it, was his duty. He did not in any way dispute the constitutionality of the act of the Legislature. The reasonableness of the ordinance made under that authority was in question.

Mr. ANDERSON: I have read the opinion within the past few days, — I am not sure it was not sent me by the member who just spoke. While it is true that in certain parts of that opinion the learned justice of that court did say that he would not hold the *statute* unconstitutional, it is also true that he laid down flatly in other parts of the opinion that anything that was unreasonable was unconstitutional, and in broad enough terms to put his own opinion of reasonableness as the test of the constitutionality not only of the ordinance but of the statute.

Mr. CLAPP: It is difficult for me to see what bearing upon this question under discussion any decision made by the police court of

Springfield regarding the jitney ordinance has. It is very likely true that he would have done better to have sustained that jitney ordinance and to have let the higher court pass upon the question of its unconstitutionality. But, however that may be, it seems to me to have very little bearing upon the subject under discussion.

Now, the gentleman asks the question: What is going to happen if the Legislature charters a corporation so that that corporation, in the exercise of its powers, comes to monopolize the necessaries of life? In the first place, if the charter on its face is so broad as clearly to authorize, or attempt to authorize, the corralling of all of a certain kind of necessaries so as to create a monopoly, I think such charter on its face would be void. That is my contention. But I can see that a corporation might be organized with its powers so stated or so disguised that it would not appear on its face as a corporation purporting to have a monopoly, but as time went on, in the practical conduct of its business, it might come to exercise a monopoly. Well, if it did, the remedy is in the hands of the Legislature. The gentleman from Brookline knows as well as any of us that ever since, I think, the eleventh day of March, 1831, no charter has been granted in Massachusetts which has not been subject to revocation, alteration or repeal by the Legislature.

Mr. CREAMER of Lynn: I should like to ask the delegate from Lexington if the Legislature has not still the right to pass such a charter as it used to pass before 1831 and has not passed since then.

Mr. CLAPP: Theoretically, yes, because the provision against granting a charter without the reserved right of repeal is contained in the Revised Laws and not in the Constitution. But I take it that, as a practical matter, there is just as much danger that the sun shall fall from the Heavens as that the Legislature of Massachusetts will to-day undertake to pass an irrepealable charter. Logically, however, that provision against passing an irrevocable charter should be contained in the Constitution, and for one I am willing to see it transferred to that place. In fact, there is a resolution reported by the committee of which I am a member recommending that that thing be done. It goes a little further than that and deals with another subject-matter at the same time, but it does deal with this specific thing, and I should suppose that the Convention would think it proper to make the suggested transfer.

Mr. CREAMER: I should like to ask the delegate from Lexington if he does not think there is as much chance of a Legislature doing wrong in that direction as of a Legislature doing wrong in the direction which he fears it might because of the powers contained in this amendment.

Mr. CLAPP: To that question I have no hesitation in saying, no, because I do not think there is. But, mind you, I am in favor of putting this provision about the repeal of charters, — the provision reserving the right of amendment and repeal, — into the Constitution itself. That is where it ought to be.

Mr. BROWN of Brockton: I now want to ask the gentleman: What will you do in the case of a foreign corporation which gets its charter in another State and then comes into Massachusetts and operates? You cannot take that property and you cannot take their charter away. What would you do?

Mr. CLAPP: I should like to ask the gentleman from Brockton to

make a little more specific the danger which he apprehends. I do not comprehend it myself.

Mr. BROWN: I want to call his attention to the age of specialization, to the age of having control of the various things centralized. For instance, the company that is absorbing all of the drug stores, the company that is absorbing all of the tobacco business; there are associations which find the means whereby they can continually capitalize and absorb. Massachusetts is a very fertile field. How would you deal with the situation?

Mr. CLAPP: The Legislature does not need for its protection the power to set up an opposition business. It is perfectly true, as the gentleman suggests, that this is the day of big business, and probably will continue to be such; but big business seems to be having a harder and harder time of it under the restrictions which are being imposed by Congress and the State legislatures, and for one I do not have any apprehension of any harmful results.

But coming to a little more specific answer to his questions, we all know, or should know, that the Legislature can prescribe whatever conditions it sees fit upon foreign corporations coming into this State. It can exclude them altogether or it can say that no foreign corporation shall come into this State unless it shall do thus and so. Why, the power to deal with and restrict foreign corporations is as ample as anything possibly could be. I want to say, Mr. President, that he (Mr. Brown) may understand it, that I am not here holding any brief for the foreign corporations or for the Massachusetts Electric Companies, or for any of the combinations or corporations to which he has referred.

Mr. BROWN: The point is this: Not that we could control that corporation, but we cannot take their property. Unless the State has the right to set in operation a counter proposition, what can be done? Competition cannot inaugurate itself. The power back of these monopolistic corporations controls the sinews whereby you finance any corporation.

Mr. CLAPP: I do not know as I can say anything more than merely repeat what I have said, namely, that personally I see no danger to the public interest through the operations of foreign corporations in this Commonwealth. And I should like to answer the gentleman's question further by asking him if he can point out any foreign corporation operating in Massachusetts to-day which seems to him on the point of controlling or monopolizing any commodity which is of importance to the public.

Mr. BROWN: If he yields to me, I can say, yes, I see it in the drug store business for one. I might name others. The combination can absorb and is absorbing anything that enters into competition with it.

Mr. CLAPP: As I say, I cannot add anything beyond saying that in my judgment the Legislature and the courts in Massachusetts to-day have abundant power to check and curb any approach which they may observe toward monopoly in the conduct of any business, — I do not care what it is.

There is just one thing further that I want to say, and then my contribution to this discussion will have been finished, for the present at least. When this question was before the Maine Supreme Court those who were seeking to get the court to deny the constitutional power for cities and towns to deal even in fuel, put up the argument that if that

were allowed there would be nothing to prevent the Legislature from authorizing the municipalities to enter into other fields of industry. But the court said that that did not follow. It said:

> The answer has already been indicated in the two tests which we have laid down. If it is asked why, if a city can establish a municipal fuel yard, it may not enter upon any kind of commercial business, carry on a grocery store or a meat market or a bakery, the answer is as has already been indicated. Such kinds of business do not measure up to either of the accepted tests. When we speak of fuel, we are dealing not with ordinary articles of merchandise for which there may be many substitutes but with an indispensable necessity of life.

And, as I have said, I am willing to put in food-stuffs, so that we might say in trying to elaborate a rule:

> When we speak of fuel or of food-stuffs, we are dealing not with ordinary articles of merchandise for which there may be many substitutes, but with indispensable necessities of life; and more than that, the commodities mentioned are admittedly under present economic conditions regulated by competition in the ordinary channels of private business enterprise.

Now, gentlemen, listen to this concluding remark by the Supreme Court of Maine, which I think embodies a wealth of sound economic principle, and something that should guide us and be of compelling force in making us decide to draw the line where I ask you to draw it:

> The principle that municipalities can neither invade private liberty nor encroach upon the field of private enterprise should be strictly maintained, as it is one of the main foundations of our prosperity and success.

Mr. BRACKETT of Arlington: As one of the original resolutions which were referred to the committee on Public Affairs, and upon which it reported the resolution before us, was introduced by me, and as it contains one provision which the pending proposition does not, and in some other respects differs in phraseology, I ask your indulgence for a moment while I read that original resolution. It is as follows:

> The General Court shall have power, whenever it deems it important for the welfare of the people, and upon such terms and conditions as it may prescribe, to authorize the Governor, with the consent of the Council, to take by purchase or otherwise, in the name and behalf of the Commonwealth, food-stuffs, fuel and other necessaries of life, and to sell the same to the inhabitants of the Commonwealth, and to the towns and cities thereof, and to authorize such towns and cities to buy such necessaries of life for sale to their inhabitants.

It also contains this proviso:

> Provided, that a just and reasonable compensation for all property so taken shall be made to the owners thereof.

That clause is not in the pending resolution. The gentleman from Brookline said yesterday he did not think it was necessary. That may be, but where there are two ways of proceeding and one way is certain while the other may involve a question, it is better to avoid the question and make everything plain and definite. Therefore I propose to move an amendment by inserting those lines in the pending resolution.

It was not my purpose in introducing this resolution to authorize the Commonwealth, or the cities or towns thereof, to enter into commercial transactions generally. My object was simply to apply to food-stuffs and fuel, and other necessaries of life, the principle of the law of eminent domain. You know that, under that law, if, for example, a railroad is to be built, and if a person whose land is necessary, — which lies, perhaps, across the route which the road is to take, —

refuses to sell it, under the power of eminent domain the corporation can take that property, — it may be his home, around which cluster his dearest associations. The corporation can take it, but of course it must pay him therefor a just and reasonable compensation.

I believe that at the present time that principle should be applied to the matter of food-stuffs and fuel, and perhaps other necessaries, although those were the two principal ones which I had in view in introducing the resolution. Here we are to-day in the midst of a great war with a scarcity of food, not only in this country but all over the world, and at this time speculators are getting control of the food-stuffs and the fuel of the country and holding them for their own enrichment at the expense of the public.

This is a time when the strong hand of the government should intervene for the protection of the people against extortion. One of the objects of government is to protect the people, — protect them against burglary and highway robbery, larceny and other crimes. It is also the duty of the government in exceptional times like these to protect the people against extortion, against robbery of that nature. And I believe here is one means of doing it, — by passing this resolution.

There is no conflict between this proposition and the decision of the Supreme Judicial Court which has been cited. That decision simply stated what could not be done under the existing Constitution. That is no reason why we should not change that Constitution. We are here for the purpose of considering whether in certain respects the Constitution should not be so changed as to allow the government to do those things which the court has held they cannot do under the existing Constitution.

The Legislature already has acted in this direction. The last act passed by the last Legislature contained these provisions in section 6:

> Whenever the Governor shall believe it necessary or expedient for the purpose of better securing the public safety or the defence or welfare of the Commonwealth, he may with the approval of the Council take possession: (a) Of any land or buildings, machinery or equipment. (b) Of any horses, vehicles, motor-vehicles, aëroplanes, ships, boats, or any other means of conveyance, rolling-stock or steam or electric railroads or of street railways. (c) Of any cattle, poultry and any provisions for man or beast, and any fuel, gasoline or other means of propulsion which may be necessary or convenient for the use of the military or naval forces of the Commonwealth or of the United States, or for the better protection or welfare of the Commonwealth or its inhabitants. He may use and employ all property so taken possession of for the service of the Commonwealth or of the United States, for such times and in such manner as he shall deem for the interests of the Commonwealth or its inhabitants, and may in particular, when in his opinion the public exigency so requires, sell or distribute gratuitously to or among any or all of the inhabitants of the Commonwealth anything taken under clause (c) of this section and may fix minimum and maximum prices therefor. He shall, with the approval of the Council, award reasonable compensation to the owners of any property of which he may take possession under the provisions of this section and for its use, and for any injury thereto or destruction thereof caused by such use.

Now, under the decisions which have been cited I doubt very much whether, if a case under that statute should go to the Supreme Judicial Court, it would be held that the Legislature had the constitutional authority to pass such an act. Therefore, I believe it is time that we should settle this question, that we should give the Legislature the power to act in an emergency like this for the protection of the people.

As far as I am concerned, I am not particular whether the general phrase "and other necessaries of life" is in the provision or not, but

what I am particularly interested in is that the Legislature shall have authority to empower the Governor and Council to take property when it is being hoarded by monopolies, when the people are asking for it, not as a charity, but asking for the right to buy it and pay for it a reasonable price. I believe that the Legislature should have the authority to give that power.

We must remember, as the gentleman from Brookline (Mr. Anderson) said yesterday, that we are not legislating here; we are simply giving an authority. We do not know that the Legislature ever will exercise that authority. Even if it should empower the Governor and Council to take the action referred to, it may not follow that the Governor and Council would deem it wise to do so. I think we can rest upon the assumption that this authority will not be given by the Legislature, or if given will not be exercised by the Governor and Council, unless there is some great emergency which requires it.

Mr. President, I move to amend the resolution by inserting after the word "ice," in line 9, the words ", provided that a just and reasonable compensation for all property so taken shall be paid to the owners thereof."

Mr. ANDERSON of Brookline: I am speaking, Mr. President, for myself and one or two members of the committee with whom I have talked, but not speaking for the whole committee, because we have had no opportunity to consider it. If there is any feeling in this Convention that there is a reasonably arguable doubt of the obligation to pay for property so taken, we should be willing to agree to the insertion of language which would remove that doubt. My own view is that when you insert in line 5, after the word "life," the words "paying reasonable compensation therefor," you certainly have gone to the limit in making it clear that this is an eminent domain power and not a police power referred to in this resolution.

Mr. ADAMS of Quincy: I have had the honor to offer an amendment to this resolution, — not because I think that it is necessary, absolutely, to have such a provision as I suggest passed at this moment of time. If this provision is suggested by my friend, the chairman, only as a stop-gap for this winter, I have no objection to withdrawing my amendment. But if he suggested it as a permanent settlement of this great question, I must protest. I do not believe it is possible for us to reach any conclusion of this question upon any such very scanty change in our fundamental law as this. I submit, Mr. President, that it is only necessary for any reasonable man to look back over the history of the last generation to be convinced that it is necessary for us, — if we propose to hold together as a country and if we propose to hold a place in the competition of the world, — that it is necessary for us to make very radical changes in our system of government. And as we are a part of the whole community of the United States, it is necessary for us to take a stand which will be sufficient for us in the end. We must look forward, that is, for a certain length of time. All our legislation hitherto has been piecemeal, it has been fragmentary, and it has been insufficient. It is only necessary for us to look back a few years to see how perfectly futile the action of the nations has been in this emergency.

A few years ago, in the years 1906 and 1907, Great Britain undertook to reorganize its army after the Boer War, and Field Marshal

Roberts, then in the House of Lords, protested against the measures which the government proposed to take as being absolutely insufficient, and as necessarily conducting the Nation toward difficulties with foreign countries. Field Marshal Roberts was laughed at. And within a few years Field Marshal Roberts saw his country absolutely defeated for the reasons that he then pointed out, and which any man who wants to understand this issue can read for himself in Hansard, in some of the very ablest speeches which have been made in England in the last half century, and which were treated as ridiculous by both parties.

But not to stop with Roberts. We can go back a generation to an abler man than Roberts, — Prince Bismarck. Seventeen years after the French War and French peace, Bismarck became aware of this tendency, this irresistible tendency, this tendency which we must all face, — the tendency which he called State socialism; that is to say, the tendency towards collective action. He, being an intelligent man, got hold of the ablest man who represented that kind of opinion in Germany, — Ferdinand Lassalle, — and had conversations with him on this subject. Lassalle presented his views and Bismarck afterwards in the Reichstag told his audience: "Yes, we have got State socialism, and you have got to have more;" and they had it; and it is on that system Germany has lived during this war, and nothing but that has saved Germany.

Now, Mr. President, it is well for us in the face of these examples to recognize the fact that the world, — the whole world, — is going through one of those tremendous catastrophes which occur about once in a century. The last one began in 1754 when General Washington fired the first shot at Great Meadows. It ended in 1815 at Waterloo. That is sixty years, and the chances are that it will be at least thirty years before we see another settled peace. The gentlemen may smile, but that is the fact, and if you go back another hundred years you will find conditions still worse. Those conditions began the same with us as when they began the Thirty Years' War in Germany which ended more than a half century after.

We, if we are sane men and are sent here to do our work as sane men, as patriotic men, must recognize that, as a Nation, we have got to go under, or we have got to give up and abandon this selfish principle of individualism, this talk that I have heard here ever since the beginning: "Oh, the public good must give way to private interest." Unless we are patriotic enough, and unless we are clear-sighted enough to be able to understand that we are part of a community, and that as part of this community we have got to yield our private interests to the public interests, we cannot survive as a Nation. [Applause.] That is what I believe, Mr. President.

Mr. CHASE of Lynn: I hesitate to rise in opposition to this measure, as I realize with all of you that something should be done to curb the speculation in food, fuel and the necessities of life. I have four reasons for opposing this measure, and I will state them very briefly.

In the first place the proposed remedy does not cure the disease, nor relieve the situation except in a slight degree. I think we all agree that, in a large measure, the fuel supply is in the hands of very wealthy interests who control the output and also the price of this great commodity. Then again the food supplies, including wheat, grain, meats, poultry, eggs and dairy products, are controlled largely by certain

wealthy combinations of capital, well known to all of us, who with their great aggregation of money and credit are able to purchase the great bulk of these products from the farmer or producer, thereby fixing the prices of these things for the entire country.

While it is true that the law of supply and demand in a measure causes the fluctuation in the prices of these necessities, and that the world war has caused a food demand almost greater than the supply, yet it also is true that selfishness and greed have been much in evidence, and that the prices and profits upon these commodities have soared far above a reasonable and just return for the efforts and investments of the business world.

In a conversation with a gentleman who was interested in a large packing-house business of this State, I was told that the firm with which he was connected did $643,000,000 worth of business last year. I do not know what the profit on this business was, but only cite this to show the power of great aggregations of capital.

Now, Mr. President, while this measure before us would permit cities and towns to engage in business, it does not in any way provide a means for the purchase of these commodities from any other source than that which, as I have stated, either directly or indirectly controls the price of these commodities. Hence the remedy does not cure the disease.

In the second place, this legislation would strike a blow at, and oftentimes would put out of business, many small merchants who I believe are having at this time the hardest struggle of their lives to keep themselves from insolvency. The class of merchants who employ labor are met with increased labor costs, including liability and compensation insurance, which is no small item with a man employing many hands. If he has horses to feed I have only to ask you to compare the cost of grain to-day with that of a few years ago to see the added burden here imposed. In fact, everything which enters into the conduct of his business has gone up in the same proportion.

Now, then, with the commodity in which he deals jumping up all the time, as the prices are increased to him by the people who control these products, where is the hope for the small business man? He is like the grain between the millstones, being ground to powder.

In the third place, as some one already has stated, I do not believe a municipality can carry on a business as cheaply as an individual or firm. With the incentive for profit taken away, the management becomes slack and negligent, work is not kept up to a rush standard, and the profit soon becomes a loss, which is made up by an increased tax placed upon the citizens to carry on the business of the municipality.

In the fourth place, it destroys individual rights and takes us a long step toward the goal of socialism, which, whether we believe in it or not, is surely coming unless some means are taken to relieve the burden which all classes, except the very rich, are beginning to feel is more than they can bear. I am not a socialist, and yet I believe at the present time there is no relief for us except by some of the measures which they have been advocating for years.

Some one has said that this measure is a socialistic one, and so it is; but it does not strike at the root of the matter. The only hope of relief so far as the food and fuel situation is concerned lies in the National government.

Now, Mr. President, as I have attempted to show that this measure is not a remedy for existing evils, I should like to express a thought of a constructive nature that has occurred to me in connection with this matter, which possibly might lead to further development by some members of this Convention. Our President and Congress have passed laws by which about two million of our young men have been asked to give their services, and possibly their lives, to our flag and country, in the interest of a world-wide democracy. Congress also has appropriated millions and billions for the support of our army and navy, and for loans to the allies in assisting them to carry on this war.

This money is raised by bond issues and taxes, which either directly or indirectly the people must pay. In the meantime although the farms of our country are yielding the greatest harvests of wheat, grains and food supplies we ever have known, yet our people are burdened with an excessive and oppressive cost of bread, meat and fuel which makes a situation which is almost unbearable.

I ask, Mr. President and delegates, if Congress, with the right and power to take our sons for the army and navy, and the right and power to raise billions by taxation for the support of these institutions, has not also the right to appropriate money raised by taxation for the purchase of the entire wheat and grain crops, together with all other food and fuel supplies of this country, fixing a price upon such goods as will give a fair profit to the producer, and also to sell the same to the people of this country through the regular channels of trade, fixing the prices of such articles in such a way as will insure a fair margin of profit for the handling of these goods for the government, and by this action relieving the already too heavy burden of our country and of the world.

I believe that this Convention, as a representative body of the whole people of Massachusetts, should send a resolution to Congress demanding relief from our burdens through some such measure as this; and if by listening to the voice of Massachusetts, Congress should pass such laws as would cause greed and avarice to hide their heads, and the people of this country to cease their worship of Mammon and turn to the God of our fathers in this hour of the world's greatest calamity, this Convention, even though not a single measure was passed, would not have met in vain.

Mr. ANDERSON of Brookline: I should like to ask the gentleman who has just spoken if he has heard that Congress, without the assistance of a Constitutional Convention, has enacted a food bill which has gone beyond the limits of anything ever conceived in any Anglo-Saxon country until the past three years; that the United States is now the largest trading corporation the world ever has seen; and whether he thinks it is consistent for us here in Massachusetts to limit ourselves to wordy appeals to the God of our fathers and to Congress, when Congress already has done that.

Mr. CHASE: I do know that Mr. Hoover is doing excellent work along these lines, but I do believe that something further could be done, and I believe that the price of wheat, which was fixed at $2.20, which makes flour $14 or $15 a barrel, could be lowered still more.

Mr. POWERS of Newton: The gentleman from Lynn who has just made some remarks states that he is not a socialist. Almost everybody in the last few years has been attempting to side-track that word

socialism. You read in the newspapers that some socialist was arrested for talking on the common the other night. So the impression has gone out that there is no distinction between a socialist and an anarchist. Why, the fact is that we are all socialists. The only distinction is in degree. Every Nation in the world has adopted more or less socialism. And every Commonwealth has adopted more or less of socialism. Massachusetts has adopted perhaps quite as much socialism as any State in the Union. You take our great educational system, which provides for the education of the children and provides also for compulsory education during certain years. What is that but socialism? Take our great system of roads or highways by which the people are permitted to mingle with each other, to go back and forth from one end of the State to the other. What is that but socialism? Nearly every city and town in the State is providing its inhabitants to-day with water for domestic purposes. That, of course, is socialism. Many of the cities and towns are providing their inhabitants with gas and electricity for the purpose of lighting and heating and cooking. That, of course, is socialism.

So we are all socialists. The question is, how far shall we carry this principle of socialism? Some gentlemen choose to call it collectivism, in distinction to individualism. That is, all get together as a collective whole and furnish the service which otherwise is furnished by the individuals.

Now, you may take this question, for instance, as contained in this measure allowing cities and towns, and the Commonwealth also, to provide coal and wood for their inhabitants. To-day cities and towns are permitted to furnish gas and electricity for the purpose of lighting, and also for cooking, and to some extent for heating. Now, it is not a long step to say that cities and towns may furnish their inhabitants with coal and wood for the purpose of heating and cooking.

And I want to say one word this morning upon this question of coal. We live in a latitude where we have to heat our houses from eight to nine months every year. Coal is the great fuel used for cooking and heating in most homes in the Commonwealth. This State makes use of about 7,000,000 tons of anthracite coal for domestic purposes a year. With the prevailing price that amounts to about $70,000,000 annually which our people pay. If you divide that up per capita, — that is, I mean, to every man, woman and child in the State, — we contribute for coal which we use in our homes on the average $20 per capita. In a family of six that means a contribution of $120 per year. Now, that is a very large sum of money. Yet if we were permitted as individuals to buy our coal of the miner direct, paying to the miner the same price that the coal operator pays, paying all of the carrying charges and the expense of delivering the coal at the home, we could put coal into our houses at the present time at $6 per ton. And yet we pay $4 more, — $10 per ton. Now, where does that $4 profit go to? If we could save $4 per ton the Commonwealth of Massachusetts would save about $28,000,000 a year.

Now, who gets that profit? No one claims that the retail dealer gets that profit. The retail dealer cannot buy of the miner. Neither can the wholesale dealer buy of the miner. The process by which coal reaches your home is something like this: You go to your retail dealer and you say: "I want ten tons of coal." He goes to what is called

a wholesale dealer in Boston, or some center of population, and he orders the coal. That wholesale dealer does not buy of the miner, but he orders the coal of an operator, possibly in Albany. The operator at Albany does not buy of the miner, but he orders the coal of an operator in Philadelphia, and the Philadelphia operator does not buy directly from the miner, but he buys of some operator up in Pennsylvania, and that operator up there has taken the entire output from the mine. So that it passes through each one of those operators, each getting his share of the profit out of it, before it reaches the wholesaler. Therefore you have the three profits that go to the operators, the profit that goes to the wholesaler, and the profit that goes to the retailer.

I want to give you some figures which came to my attention only recently on the cost of coal. It came in the nature of evidence where there was a coal controversy in which the question of the cost of coal had to be determined. I find at the present time that the cost of anthracite coal in Pennsylvania, free-on-board cars, averages $3.20 per ton. The freight rate from the Pennsylvania coal mine to Boston amounts to $2.55 a ton. Pennsylvania exacts what is called a State tax of eight cents a ton, which makes the total cost of the delivery of a ton of coal, — that is a long ton of coal, 2,240 pounds, — in Boston, $5.83. Now, that $5.83 pays the miner, it pays for the tax, it pays the rail rate and is delivered in Boston, 2,240 pounds of coal, for $5.83. You have to take off from that, of course, in order to reduce it to the 2,000 pounds, a trifle over one-tenth, which brings the price of coal in Boston at about $5.20. Now, the cost of delivering coal, as I ascertained, from the railroad station to the house, is about seventy-five cents. That brings your coal, — the actual cost of your coal to the consumer, — in paying all these prices without profit, at $6 a ton at the present time.

I was talking only yesterday with a banker who told me that he saw not long ago a bill-of-lading of a car-load of coal shipped from the mines in Pennsylvania to one of the stations in Massachusetts which had changed ownership five times between the mine and this place to which it was shipped. In other words, it had been traded on from point to point, and of course the bill-of-lading carried with it the title in the car-load of coal.

Now, one of the propositions contained in this resolution which is under discussion here is that cities and towns may go into the business of dealing in coal and wood. I can see no objection to it. The question really for us to decide is what limitation, if any, we shall place upon legislative authority in dealing with this proposition. I fully agree with the suggestion made this morning by the gentleman from Arlington, that there ought to be a provision for just compensation to those who are in the coal business for their yards and for their apparatus, whatever has to be taken over, and I should assume that the Legislature would provide that even if the Constitution did not specify it. I think it should specify it in the resolution.

Now, take this question of wood and you have the same proposition that you have in the coal business. The retail dealer does not buy wood of the man who cuts the wood in the forest; he buys it of what is called a contractor.

Mr. Mahoney of Boston: How much does the retail coal dealer pay for his coal from the wholesaler? A man doing a retail coal busi-

ness who buys the coal from the wholesaler, — how much does he have to pay him for his coal per ton?

Mr. Powers: I do not know how much profit the retail dealer makes, but I am satisfied of this: The retail dealer does not make an unreasonable profit. I am satisfied that the retail dealer's profit is a limited profit and no larger than he should receive. If the retail dealer could deal directly with the miner, then he could make a larger profit than he makes to-day and we could receive our coal for at least three or four dollars less than we are paying at the present time.

I said to a coal dealer the other day: "I should like to buy a carload of coal and have it shipped to my home town of Newton and I will pay for it in advance if you wish to have me do it; and I should also like to arrange to purchase a certain number of car-loads for my neighbors." "Why," he replied, "you can't do anything of that kind; that isn't the custom." He said: "I can't buy of the miner, although I am a wholesale dealer. You must buy of your retail dealer."

In other words, the system is set up in such a way that we must buy of the retail dealer, the retail dealer must buy of the wholesale dealer and the wholesale dealer must buy of one operator who buys of another operator, who in turn buys of the miner.

Now the result is all those middlemen who take their profits. And that is not the worst feature of it. The operator is always strong enough to hold back coal and create a scarcity and force up the price. I have been amazed that Congress would permit a situation of this kind to exist in all these years. You remember in the old days the railroads owned the mines and they shipped the coal, and somebody said: "It is not right that a company chartered as a transportation company should be permitted to carry on a coal business." And so they stepped in and prohibited the railroads from owning coal mines and bringing it directly to points of consumption. What was the effect of that? The effect of that was that the railroads went out of the business, and then the middlemen came in between the miner and the consumer.

Mr. Anderson of Brookline: Is the gentleman quite correct in that last statement? Has he not overlooked or forgotten that there is now pending before the Supreme Court of the United States and ordered this past winter for reargument the question of continuous control, indirectly perhaps but nevertheless effectual, by the railroads of substantially the entire anthracite output? Now that I am on my feet I should like to ask him if he will also give to the Convention some data relative to bituminous coal, our sufferings from the high price of which in the whole Commonwealth and in all New England during the past winter probably have been greater because bituminous coal has gone up far more in proportion to old prices than has anthracite.

Mr. Powers: I do not claim to know very much about what the present administration is doing, and I always have to go to my friend from Brookline to find out what we may expect in the way of legislation. I will agree, however, that the present administration is legislating on the question of food, because I am forced every time that I dine at home to take my food according to the direction of the food dictator, and the only time I have any freedom is during the lunch hour when I am in town.

Mr. Cusick of Boston: Is it not true that these facts which you

have just detailed here have been placed before the Federal Trade Commission *in extenso*, that all those details have been gone into by the Federal Trade Commission and that they have made a report?

Mr. POWERS: I did not bring out these facts for the sake of criticizing the administration in any way. I brought them out rather in support of the proposition that is now before us, showing that there exists to-day an evil that ought not to exist, and for the purpose also of showing that if the Commonwealth went into this business collectively the Commonwealth probably could bring about Federal legislation, whatever Federal legislation may be required, so that we could get rid of certain evils that exist at the present time.

Mr. CUSICK: That is the point that I want to bring out. Will you tell us how the Commonwealth in the coal business can overcome the difficulties which you have described when the Federal Trade Commission, a Federal Commission, has been unable as yet to do it?

Mr. POWERS: Why, I assume that if the Commonwealth of Massachusetts went into the coal business its standing, so far as Federal legislation is concerned, would be entirely different than the standing of individuals or a corporation.

Mr. CUSICK: I am referring to the Federal Trade Commission and not an individual. They have gone into this matter and have been unable to change the conditions. If that is so I ask you what power would the Commonwealth of Massachusetts have more than they have under the present Federal laws?

Mr. POWERS: I hope the gentleman from Boston does not intend that this Convention shall understand that Congress cannot remedy the present situation. It is purely a question of the regulation of interstate commerce, and of course Congress can determine how interstate commerce shall be carried on.

Mr. ANDERSON: I do not know from what the gentleman said whether he has had occasion to consider with care that exceedingly illuminating report by the Federal Trade Commission; but the Convention ought to know, I think, in the light of what seemed to me the misleading questions of the gentleman from Boston (Mr. Cusick), that there is one report and I think two very elaborate reports; and that so far from making against the contention of the gentleman from Newton many of the evils pointed out in our present system of distributing coal are found to be due to local causes, probably beyond the easy, perhaps beyond the possible, reach of interstate law. I wanted to make it clear, having had occasion probably to know more about what has been going on in that field than most of the members of the Convention, that the investigations of the Federal government, instead of making against the contention of the gentleman from Newton, make in favor of our doing in our own local field what we can to remedy the troubles and the difficulties from which we have been suffering so obviously. [Applause.]

Mr. SHEA of Dalton: In connection with the statement of the United States Attorney (Mr. Anderson) I would say in my own home town of Dalton last winter coal sold for $8.75 a ton, while in the neighboring city of Pittsfield, but five miles distant, coal sold for $10 and $10.50.

Mr. POWERS: The gentleman from Brookline, the chairman of the committee, asked me what I had to say concerning bituminous coal.

Of course we all understand that the price of bituminous coal is very high at the present time. That I take to be due largely to the interference with water navigation. Our shipping has been called largely into the war and taken away. It is impossible to get shipping to-day, and about ninety-eight per cent of all bituminous coal that comes to Massachusetts comes by water.

Now it is almost impossible to bring bituminous coal from the fields of West Virginia by rail; that is, the expense is prohibitive. You see, our bituminous coal comes largely from West Virginia. It is shipped from West Virginia down to Norfolk; from Norfolk it is brought around to these coast ports by what is called coastwise commerce and brought into New York and into New London, into Providence, into Boston, into Portsmouth and into Portland and Bangor on the New England coast. Now the taking away of this shipping has interfered with the shipping of bituminous coal. In the case of the hard or anthracite coal, that is mined largely in the States of Pennsylvania and Ohio, and that is brought by all rail very largely at the present time. Formerly the most of the hard coal that was brought from Pennsylvania to Massachusetts came by water. That is, it was shipped down to the Jersey coast and brought around by boat from the Jersey coast to Boston and to other ports on the New England coast. But the cost of bituminous coal, which is used for commercial purposes, is to-day made very high by the lack of transportation. That, I assume, will be cured at some time when the war is over and we get back our shipping; you will see bituminous coal then, of course, down at its normal price.

I want to say just a word in the matter of wood. We have in New England large quantities of what may be called firewood; that is, of hard wood which is growing on our hills and mountains. It is commencing to be utilized and it always will be utilized when coal is high. The price of wood to-day is almost prohibitive. It costs to-day, if you buy oak for your fireplace and put it into your house, from $15 to $16 per cord, and very poor wood at that.

Now the actual cost of wood, — and by the way, I know something about this matter of wood, because I own a farm up in New Hampshire and I cut my own wood and I bring it down, and I am looking forward some time, Mr. President, to retiring to that farm, where I never will be worried about tax on excess profits; but I find that it costs to cut wood up in New Hampshire two miles and a half from the railroad station and 140 miles from Boston, — to cut the wood, to ship it to the station, to cut it up for the fireplace, to ship it down to Watertown and from Watertown to put it in my house at Newton, it costs just $8 to a cent. That is the actual cost. Now you have got to add to that the value of the wood standing, and that is about a dollar a cord as the market price goes. That is $9. Now there is a difference of $6 between the actual cost and the market price of $15. Somebody makes $6. Well, who makes it? The retailer does not make it. The contractor makes it, because the contractor buys the wood, he sells it to another contractor, and the other contractor sells it to another, and it finally comes to the retailer, and the retailer sells it to the consumer.

Now you have got this whole question of middlemen in this country, and that is what makes this cost of distribution. The large cost

of distribution comes by reason of the middlemen, and the question is, what are you going to do with the middlemen?

Mr. UNDERHILL of Somerville: I do not know as I quite clearly caught the gentleman's statement regarding his farm up in New Hampshire, the fact that he cut his own wood and that it cost him seven or eight dollars a cord to get it down here. I do not understand that the gentleman placed his wood or got his wood through a contractor or two or three contractors, but it cost him six or seven or eight dollars a cord to get it down here. Is that so?

Mr. POWERS: I regret that I did not make my statement clear so that my friend from Somerville could understand it. What I stated was that the cost of cutting wood, preparing it for the fireplace, and putting it into the house and bringing it from New Hampshire, was $8 a cord; that what we have to pay for wood is $16 or $17 a cord. If you add to that the cost of the wood standing, it makes the actual cost $9 a cord against which you pay $16 a cord.

Mr. WASHBURN of Worcester: In order to elucidate further this interesting question, — because I, too, am a farmer, — I should like to know if the gentleman cuts and splits the wood himself after it has arrived at its destination? [Laughter.]

Mr. POWERS: Do you think that is material to the question that is now before us?

Mr. WASHBURN: This is the first time that I ever have been charged in debate with asking an immaterial question. I know what high value the gentleman places upon his professional time, and I wish to inquire whether he cut up the wood himself; and I will add the further inquiry whether in so doing, in arriving at this conclusion, he charges that labor at his regular professional rates? [Laughter.]

Mr. POWERS: I doubt if the gentleman from Worcester has any knowledge as to what I charge my clients. I will say, Mr. President, that I have not charged them anything since the 5th day of June. [Laughter.] I am living at the present time on the bounty of the Commonwealth. I will say, however, to my friend from Worcester that in the old days when he was living in the lap of luxury as a youth, following the hounds up there in Worcester and doing other things such as Worcester men used to do in those old days, I was in the logging-camp cutting logs and splitting wood, and I suppose that I could do it again if I really had to do it. But I remember very well what pleasure I did get out of it in those old days, when we got up in the morning when the stars were shining, went forth to the wood-lot and did not get home till long after the sun went down. And my recollection of that employment is such that it leads me to believe that I get more pleasure at the present time out of playing golf than I could by splitting wood. [Laughter.]

I want to say just one other word, and then I am through. The question that we have to deal with here is how far or to what extent are we going to limit this resolution? Are you going to allow the Legislature to grant to cities and towns authority to do all kinds of business, or are you going to limit this field of socialism? My belief is that cities and towns ought to be limited so far as the exercise of this power is concerned.

Mr. CARR of Hopkinton: I should like to ask the gentleman in what way he differentiates between ice and fuel?

Mr. Powers: I do not know as there is any differentiation between them. It was not my purpose to say that authority should be limited to coal and wood, I do not mean that, or to ice; possibly not to foodstuffs. But I think when you get into the realm of dealing with foodstuffs, with clothing, with manufacturing and all those things, you are asking a town to exercise a function which is going to be very difficult for it to exercise. Some one has said that you safely can trust this whole matter to the Legislature, and that may be so, — although I am rather surprised to find that my friend from Brookline, after what he has said about the Massachusetts Legislature, is willing to trust anything to the Legislature of Massachusetts. It may be that it can be left there safely, leaving the matter to the aroused public opinion as to how far cities and towns ought to be permitted to go into this business of furnishing their inhabitants with the necessities of life. I certainly am favorable to the general proposition, but the question I had in mind was whether it is not our duty to put some limitation upon the exercise of that authority. [Applause.]

Mr. Thompson of Beverly: I should like to ask the last speaker a question before he takes his seat. He appears to have made a study of this proposition and from his remarks I have drawn the conclusion that he has placed the responsibility somewhat upon the middlemen. I should like to ask him if he does not think that the retailers formed a combination among themselves? I want to say, Mr. President, that in my city, the city of Beverly, where the city itself goes out every year to procure coal for the different departments, we cannot get any two coal dealers to bid on the coal or on the wood and one man will not bid against the other; consequently we have only one bid every year to supply the city with coal, and we cannot go into the neighboring cities and get any coal contractor or retailer in those cities to bid against the dealers in my city. I should like to ask him if he does not think the retailers have formed a combination to keep the prices up?

Mr. Powers: I do not think that is true in the coal business. I do not believe it is true in the ice business. It is claimed that in certain lines of business there are combinations to raise the price. I have no opinion upon it.

I should like to say just one word, as the gentleman from Winchester (Mr. Dutch) has called my attention to the substitute offered here by the gentleman from Wellesley (Mr. Pillsbury). It seems to me that that substitute fairly covers the case and that we should be entirely justified in recommending a resolution that did not go beyond the provisions contained in that substitute.

Mr. Washburn of Worcester: I regard this measure now before the Convention as of even greater importance than that of the initiative and referendum. In saying this I apologize to the distinguished gentleman in the third division (Mr. Walker of Brookline), who now honors me with his attention. But this measure, as I conceive it, that we are now considering, is framed with a purpose to minister to the welfare of the people of this Commonwealth. It is a subject that should engage the earnest attention of every member of the Convention, because it vitally concerns the welfare of our fellow-men. There is a large variety of opinion, apparently, in the Convention, as to the scope which this measure should finally take. The gentleman from Lexington (Mr. Clapp), a member of the committee, speaking yester-

day in opposition to its broader interpretation, seemed to be puzzled somewhat as to what might be deemed the necessities or the necessaries of life. If I understood him correctly he went so far as to say that a collar and a necktie are necessaries of life. I think the gentleman spoke inadvertently, because I believe it to be true that neither of those adjuncts to civilized apparel is a necessity, and I imagine that if this resolution were to become a law it would be difficult for any municipality to establish a steam laundry under its provisions, and it would be a long day before you would find at any meeting of a board of aldermen any consultation as to the best manner of making neckties.

My friend from Brockton in the second division (Mr. Brown) would so extend the power of municipalities as to enable them to indulge in the highly useful, indeed very essential, occupation of rolling pills.

Mr. BROWN of Brockton: As I do not quite know myself where I stand on these details I want to inquire how the gentleman has arrived at a conclusion before I got there myself. [Laughter.]

Mr. WASHBURN: I understood, — and I do not wish to do the gentleman injustice, — but I understood that among other things he objected to the great consolidation which he alleged had been going on among the pharmacists of the State, and I understood that he wished to leave it to the municipalities to enter into that branch of business. Unwittingly, Mr. President, I apparently have done an injustice to the gentleman in the second division, and I withdraw my allegation. [Laughter.]

Speaking now as I always mean to speak, — excepting when I am interrupted by some member of the Convention, — in my most serious vein, I wish to say that the present conditions under which we are living are of a gravity almost without parallel in our history. I of course refer to the high cost of living, to the high cost of the necessaries of life; a condition, Mr. President, which I judge has precipitated this discussion in the Convention and the report of this committee.

This is a subject, sir, in which I have taken a good deal of interest. I do not wish to minimize its importance. I do not wish to speak generally upon the subject, but, so far as I may, to deal with demonstrated facts.

What has been this increase in the cost of living? It is not necessary to demonstrate it to any householder, because he feels the condition acutely. I am not speaking now in the interests of the well-to-do, but I am speaking of the condition of that great proportion of our fellow-men who labor with their hands unceasingly for a bare existence. We sometimes speak lightly of what we call "prosperous times." What do we mean by "prosperous times"? We mean times when labor is employed and when the laborer goes home every week with his week's pay in his envelope. Ah, my friends, we may like to solace ourselves with the reflection that those are "prosperous times," but the fact remains that even under those conditions the great majority of our fellow-men find it exceedingly difficult to make both ends meet, and when sickness or temporary misfortune overtakes them they soon fall back into a condition of great distress.

Now what does the present high cost of living mean to people in that position of life? I looked over the figures of the Associated Charities in the city of Worcester the other day to ascertain what actually had

been the advance in the cost of living. These figures I believe to be accurate. I hope I shall not weary you with details, but what I say has a direct bearing on the question under discussion. In making these comparisons I shall use a fixed ration made up of different kinds of food most often found upon the tables of laboring men. There is a bag of flour, a peck of potatoes, a pound of salt pork, two quarts of beans, a quart of molasses, two pounds of sugar, two pounds of corn meal, a fixed quantity of condensed milk, two pounds of oatmeal, one-quarter of a pound of tea and a fixed quantity of soap. That ration is made up to relieve a family in distress for the period of a week, and what does it cost?

	1904.	1915.	1916.	1917.			
		September 30.	September 28.	May 9.	July 25.	August 22.	September 5.
Flour (bag),	$0 70	$1 00	$1 30	$2 15	$2 00	$1 90	$1 80
Potatoes (peck),	25	22	37	1 00	60	50	50
Salt pork (1 pound),	10	18	20	28	28	28	28
Beans (2 quarts),	18	28	44	72	80	80	72
Molasses (1 quart),	10	14	15	15	20	20	15
Sugar (2 pounds),	11	12	15	20	18	20	20
Corn meal (2 pounds),	04	07	08	12	14	16	16
Condensed milk,	10	10	13	18	18	15	15
Oatmeal (2 pounds),	08	10	10	14	14	16	16
Tea (¼ pound),	10	10	10	10	10	10	10
Soap,	04	05	05	06	07	07	7
Totals,	$1 80	$2 36	$3 07	$5 10	$4 69	$4 52	$4 29

In 1904, thirteen years ago, $1.80.

In September, 1915, $2.36.

In September, 1916, $3.07.

In May, 1917, — and this was the high water mark, — $5.10.

The waters had receded in July a little to $4.69.

In August, 1917, $4.52; and in this present month of September, $4.29.

Comparing the cost of food in this present month with the cost of food in 1904, it means this in figures: That during this month it cost $35.75 to purchase the same quantity of food that in 1904 cost $15. In other words, if the item of food alone were considered, — and I realize that has advanced out of proportion with everything else, — but if the item of food alone were considered a man should receive in wages $35.75 a week now to be as well off as he was in 1904 on a wage of $15 a week.

I do not suggest that this represents the difference in the entire cost of living, because I know that clothing and rent have not comparably advanced with the advance in the price of food. I am stating this question as strongly as I can in order that against this dark back-

ground I may throw in bold relief some suggestions of a conservative tendency.

I differ with some of those who have spoken who have objected to conferring upon the municipality the power to deal in food because it may put the grocer out of business. I do not agree with those who would withhold the power to deal in meat from the municipality because it would put the butcher out of business; because if the welfare of the whole people is to be advanced by putting the grocer out of business and the butcher out of business, — out of business they should go. [Applause.] In my opinion that time has not come yet.

Now, Mr. President, in some of these amendments, — I note particularly in the amendment of my distinguished friend from Wellesley (Mr. Pillsbury), — these words are used. He says in his proposed amendment:

> The Legislature, when and so far as in its judgment a public exigency exists —

Ah, my friends, an exigency exists in thousands and thousands of households in what we like to term times of prosperity. And if this power is to be conferred upon our municipalities it should be with the expectation that the municipalities, through their public administration of the sale and distribution of food and fuel, will exercise a continuing function in times of distress.

Now I want to say a word about normal times. No one would contend that these are normal times. God grant that such a time as this never may occur again in the history of the Republic! [Applause.] But in legislating we should have in mind the conditions that ordinarily obtain from one decade to another. No one here believes that any one in this Commonwealth is going to starve or going to freeze. We shall find some method, as we did in the winter of 1914, to feed and warm and clothe every one.

There have been some suggestions made on this floor which I think should be corrected, because it is highly important that we get a true perspective of this whole situation. There is no greater enemy of society than a man who wittingly or unwittingly misrepresents the facts. There is no greater enemy of society than he who, through misrepresentation, would inflame class hatred. In these questions, if in none other, we should be careful to get at the truth.

Now in normal times and not so very long ago there was a great cry raised against what was called the beef trust. They said that the beef trust was imposing upon the people of the country, exercising extortion, and that to the methods of the beef trust was due the advance in the cost of living. I had occasion to give the matter some consideration at that time and I found then what is true now, that as the number of sheep and hogs and cattle had been decreasing by millions the number of people dependent on those products had been increasing by millions, and the natural result was that the price of beef, the price of mutton and the price of pork had advanced.

I was not content with that general conclusion and I made a personal investigation at first-hand, and this was the result:

I ascertained, and I believe from a reliable source, that a steer weighing 1,360 pounds live weight at seven cents a pound, came to $95.20. Here is the result of the sale, — and I am doing this for a purpose. I want to demonstrate if I can that in normal times we are

getting the necessities of life at as low a cost as is consistent with their continued production. There are sporadic cases of abuse, there are sporadic cases of extortion, but I believe what I say to be true. I believe that it can be demonstrated, and if it be true it ought to go far toward leading us in viewing these questions to do so with a sounder judgment and perhaps with less heated feelings.

I have started with my steer and I have bought him, and now I am going to sell him. He cost seven cents a pound live weight, — $95.20, — and this is what he sold for: 816 pounds carcass, at 9 cents, $73.44; 80 pounds hide at 13 cents, $10.40; 1 liver, 50 cents; 75 pounds tallow at 8 cents, $6; tongue, heart, tail, etc., $1.10; fertilizer material, $1 (I have accounted for everything but the sentiment); total, $92.44, — an apparent loss to the packer of $2.76.

Mr. BROWN of Brockton: As the gentleman has the statistics in his hand I wonder if he can find in there who paid for the hay for raising that steer? I do not ask that as a foolish question, but does he discover in the price of that steer that he has figured there is sufficient to remunerate the farmer and give him a profit?

Mr. WASHBURN: My investigation, no doubt superficial, did not extend to the point which the gentleman raises. I was on the point of apologizing in behalf of the packers for their losing money on this operation. I of course do not mean to say that the packers always lost money. I only mean to suggest that taking one year with another in normal times the selling price is very close to the cost price, sometimes above and sometimes below. It was of course expected in this particular case that this carcass of beef would bring the packer at least ten cents per pound in this market, and in that case it would have shown a gross profit of $5.36; this to cover packing-house expense, freight to New England and selling cost there.

It is my belief that in normal times this reflects pretty accurately the ebb and flow of this particular industry, and every man in business knows that the manufacturer to-day, whether he is manufacturing beef or cotton cloth or woolen or steel, depends upon a large output at a very small margin. There is one of the fundamental rules governing business to-day, and to me it is reassuring to cultivate that belief.

Why, Mr. President, if you were so disposed and the exigencies of the new tax laws should compel you to do it, you can go downtown here in Boston and purchase a shirt and a very good one, for fifty cents. Two and a half yards goes into that shirt in the form of cotton cloth. If the manufacturer, one year with another, can make half a cent a yard on that cloth, he is prosperous, and some misguided man who watches his progress through the street looks at him with envy, perhaps, as a man who has appropriated the whole fifty cents that the shirt cost. I am not, Mr. President, dealing with these matters for the sake of consuming time, but because I believe there is a fundamental truth here that has been too long overlooked, and that in this great inquest upon the laws of the Commonwealth in which we are seeking to remedy evils, we should seek to get a very correct understanding of what they are.

Continuing his argument after the recess, Mr. Washburn said:

When the Convention recessed I had suggested, at too great length, I realize, but as briefly as I could, the great importance of this pend-

ing measure. I had illustrated by figures, which I believe to be correct, the conditions of extreme gravity now facing our people in the high prices of food. I had sought to impress upon the Convention what I believe to be a fact, that in normal times, through the leveling effect of competition, our people are securing at reasonable prices all of the fundamental necessities, — food, heat and clothing. I ventured to suggest that in order to get a correct perspective of this question, a more tolerant and a more just view should be had of the great aggregations of corporate wealth.

I shall have a word or two more to say on that subject in a moment; but before doing so I wish to invite your attention to a few more statistics and these relate to the cost of bread. Ah, my friends, how much that simple word suggests to us! A word that we use a hundred times a day, but a word that suggests human suffering, yes, and revolution, on the part of people who are unable to get bread. Now, as touching the cost of bread here are some figures which I believe to be accurate, taken in normal times, which bear out, I think, my suggestion that in such times the people are not being imposed upon.

I have estimated the cost of three hundred and fifty loaves of bread. They are sold at three cents a loaf, — I am speaking now not of the present, but of normal times, — at an aggregate of $10.50, less estimated shrinkage of 10 per cent, $1.05, leaving the net price realized, $9.45.

Manufacturing Cost.

Barrel of flour,	$5.40
3 pounds salt,	.02
1½ pounds yeast,	.38
16 quarts milk,	.95
3½ pounds lard,	.35
3½ pounds sugar,	.18
Malt extract,	.08
Bakery labor,	1.50
Total cost,	$8.86

Showing a gross gain on the 350 loaves of 59 cents. I shall not multiply these statistics.

Mr. DONOVAN of Springfield: I should like to ask the gentleman from Worcester if he will give us the date of those statistics.

Mr. WASHBURN: The other day when I was asked a similar question by the distinguished gentleman from Brookline (Mr. Anderson) I was at the moment unable to answer it. I am more happily circumstanced to-day, because I can say to the gentleman that these figures, as nearly as I can ascertain, were gathered in 1910, — in what I call normal times, when the Republican Party [laughter] was in control of both branches of the Congress, and Uncle Joe Cannon was Speaker. [Laughter.]

Mr. DONOVAN: I was wondering if the gentleman had to go back as far as that to find a normal time. I had an idea that possibly he must have skipped the year of the psychological depression to get back to a time when times were normal.

Mr. WASHBURN: The fact that these figures were selected is due largely to the fact that I happened to have them in my possession. But I should not have shrunk from taking figures of a later date, even in that winter of great depression, — 1914.

There are some questions here that I propose to deal with rather frankly. It may arouse some remonstrance on the part of some of my friends, but I want to say that we are all of us more or less objects of charity.

If my friend from Brockton (Mr. Brown) should invite me to go down to his town to address some meeting of labor men on the iniquities of the initiative and the referendum [laughter], I know him well enough to realize that I should be his guest from the time I left this chamber until I returned; and when he took me down into the subway, as no doubt he would [laughter], to give me a ride to the depot, who would pay for it?

Mr. BROWN of Brockton: Valuing my reputation, would he be more specific as to which subway? [Laughter.]

Mr. WASHBURN: Well, Mr. President, I assume that my friend is familiar with the nomenclature of the game of golf, and I want to say to him that the subway to which I referred bears no relation whatever to the nineteenth hole. [Laughter.]

Mr. President, who would pay for our ride on the Elevated road? The gentleman from Brockton would pay for part of it; the other part of it would be paid for by the stockholders of the Boston Elevated Railway Company. And to that extent the gentleman from Brockton and I would be the recipients of charity.

Mr. BAUER of Lynn: I should like to have the delegate from Worcester explain to this Convention just how there would be any charity for any part of that expense borne by the Boston Elevated Railway Company. [Laughter.]

Mr. WASHBURN: The gentleman does not credit me even with that slight measure of intelligence which I hope I possess. I was about to analyze this five-cent fare. This is about all I shall have to say on this branch of the subject, but it is something that ought to be said.

The five cents which the gentleman from Brockton would pay for his fare, and the other five cents that he would pay for mine when we start out on this excursion, is divided up about as follows:

	Cents.
Administration expenses,	0.210
Transportation expenses,	2.145
Maintenance,	.770
Damage and legal expenses,	.300
Taxes and rentals,	.455
Other fixed charges,	.835
Dividends,	.285
Total,	5.000

and, in view of the great advance in prices and wages, there would now be still less available for dividends.

Mr. BROWN: I should like to ask the gentleman if anywhere in the analysis of that five cents he finds what portion was paid to represent the eight per cent dividend paid on West End stock which was valued at $92 by the Public Service Commission of 1899? It placed that valuation on the West End stock and allowed the Boston Elevated Railway Company to issue stock at a hundred dollars in exchange for it where the physical value was only $92 on the $100. The same people who were in the West End Road were in the Boston Elevated Railway Company. Do you call it charity, sir, when I am forced to

pay something toward such a steal that was perpetrated by our trustees? [Applause.]

Mr. WASHBURN: I should like to ask the gentleman a question — (Mr. Brown nodded assent) — and then I will answer his. I think that they are equally difficult. Will the gentleman kindly demonstrate to me that the rectilinear elements of the hyperbolic paraboloid divide the directrices proportionally? [Laughter.]

Mr. BROWN: I should rather meet the gentleman on the hypothenuse of a right-angled triangle. [Laughter.]

Mr. WASHBURN: The geometrical figure that the gentleman refers to suggests *pons asinorum*. [Laughter.]

Mr. McCARTHY of Marlborough: I am interested to know whether or not if the gentleman from Brockton should bring the gentleman from Worcester to Brockton in the gentleman from Brockton's automobile of a certain type, — I should like to ask the gentleman from Worcester: In what proportion would Henry Ford be the entertainer? [Laughter.]

The President: The Chair will ask the members to confine themselves to the subject under debate.

Mr. WASHBURN: I am in doubt whether after the observation of the Chair I shall be in order if I answer the question, but I shall so far trespass upon the forbearance of the Chair as to say that if the gentleman from Brockton coupled his invitation with the suggestion that I go there in a Ford car, I would not go. [Laughter.]

I deplore this interruption to the serious thread of my discourse, because I fear that it serves to divert the mind from a very important consideration which I am trying to demonstrate, which is this: That in dealing with these questions we must not lose sight of the facts. And I notice a disposition in certain quarters to ignore absolutely the conditions that now surround the conduct of our great business affairs.

Why, Mr. President, in further illustration I will not shrink from saying a word, too, about the trusts, and I say without hesitation that the conditions of labor under the trust administration of our great corporations is infinitely better than it was before this industrial condition existed.

Why, sir, if you want to draw a picture of labor shackled to the car of capital, make no reference to trusts, but go back with me for fifty years to the individual mill owner in a New England village, who owned the tenements and owned the store and owned the mill; the operatives of that day were chained to the industry as the serfs in Russia were once bound to the soil, and the individual worker of that day was absolutely unable to deal with his employer on terms of equality. The economists used to tell us that if labor cannot find employment, in response to a great economic law, it should migrate to the place where labor can be found. Migrate! Imagine an operative migrating who gets seven or eight dollars a week and has a family of two or three children dependent on him! His employer said in those days: "If you don't like the conditions, go somewhere else." The man had to stay where he was or starve. That is why it is that I have been, and am, in favor of organized labor, so that those conditions could be improved, — as they have been. I have followed these industries, some of them, from the time when they were in that condition up to the present, — when they are part of a great trust

organization. I find now hospitals, I find nurses, I find provision made for pensions, I find every physical need and social aspiration of that man ministered to; and the condition of to-day as compared with the condition of fifty years ago is as light compared with darkness. Why do not some of the people who are declaiming in season and out of season about the rights of labor, — which I respect just as much as anyone, — mention some of these facts when they are discussing this question?

Mr. O'Connell of Salem: Does not the condition prevail to-day that the gentleman is picturing as prevailing fifty years ago, in this Commonwealth?

Mr. Washburn: Well, Mr. President, I have been trying to demonstrate that it does not.

Mr. Donovan of Springfield: I have been reminded by the remarks of the gentleman from Worcester of the statistics that were quoted in this chamber early in the debate upon the initiative and referendum. According to those statistics, — and I have since verified them by seeking the original source, which was the report of the United States Commission on Industrial Relations, — I find, as was quoted at that time, that two per cent of the people of this Nation own and control sixty per cent of the wealth; that sixty-five per cent of the people control five per cent of the wealth. Is that in line with the statements of the gentleman from Worcester, or is it what he is attempting to prove, — is it in line with what he is attempting to prove, — that the conditions at this time, generally speaking, are better than they were fifty years ago?

Mr. Washburn: I am not discussing the question of the distribution of wealth. When I do discuss that question, — as I have on several occasions, particularly when my son is asking for an increase in his allowance [laughter], — I always tell this story: In England many years ago, in a time of great discontent, one of the great Rothschild family received a letter from a man who complained that wealth was not evenly distributed; and he considered that a gross injustice was done him, because while he lived in penury, Baron Rothschild lived in great luxury. This member of the house of Rothschild wrote this man, and said to him: "My dear Sir, I have been greatly impressed with your suggestion, and I am inclined to think that there may be some substantial foundation for what you say. I enclose herewith that portion of my fortune to which you would be entitled if I were to make an even distribution of it among the people to whom you refer." And he enclosed a shilling. [Laughter.]

I have done with these general observations, made with a purpose of concentrating the attention of the Convention upon the importance of this question, upon the peculiar conditions that surround us, and also upon the industrial conditions, — a proper knowledge of which is essential to an understanding of this whole question.

Now, I hope, Mr. President, to be able to vote for this measure in some form. I cannot possibly go with the distinguished gentleman from Quincy (Mr. Adams) in his suggestion that the Legislature have power to authorize the municipalities to engage in all branches of industry. It seems to me that this is going a great way beyond the bounds of prudence.

Mr. Adams of Quincy: May I ask the honorable gentleman from

Worcester whether he thinks that England, France, Germany, and Italy run any great danger, or have incurred very great disasters, by having that power which I suggest, lodged in their corporations or in their towns?

Mr. WASHBURN: I do not feel competent to answer the question which the gentleman has asked. I am considering this measure from the standpoint of a Massachusetts man, and I am considering a measure designed for application to Massachusetts people.

Mr. ADAMS: May I ask the gentleman to define what social difference there is between Massachusetts and every other community in the world outside of the United States, which prevents Massachusetts from standing on the same competitive basis that other communities stand on?

Mr. WASHBURN: I think there is a very great difference, and a difference very much in favor of the United States. I believe that under the impetus of individual initiative our labor and our capital are more effective here than in any Nation of the world. And I prefer to leave our people subject to the spur of individual initiative, with the rewards that may be in store for them, rather than to smother them under a network of legislation from which they now are slowly emerging in Great Britain, or under such autocratic control as prevails in Germany. [Applause.]

In order to make it clear just what I mean, I will read the amendment of the gentleman from Quincy:

> And the General Court may further authorize the Commonwealth, acting either in its corporate capacity, or through the agency of such municipal or other corporations as it may select or create for the purpose, to organize, conduct or administer such agricultural, commercial, industrial or trading undertakings or enterprises, as the General Court shall declare to be conducive to the public welfare.

If this amendment were to be adopted the Commonwealth might run a department store, a steel mill, — practically everything now open to the individual. My fundamental proposition is that year in and year out the individual, the partnership, the corporation, can carry on any kind of business at less cost than the government of the State or of a city.

Mr. ADAMS: May I ask whether the Panama Canal, for instance, was found possible to be carried on at less cost by private individuals than by the government?

Mr. WASHBURN: I cannot answer that question.

Mr. ADAMS: It is a very important question to answer. It is a very important question to answer, Mr. President, because of the question of construction. And if you cannot answer it, — that is the largest construction attempt that we have ever made; it is a crucial test.

Mr. WASHBURN: I shall state my belief: That the work of digging the Canal probably could have been done under private contract for less than it cost the United States. But I shall not rest there in my reply. I shall suggest to the distinguished gentleman in the first division (Mr. Adams) that there is a great business conducted in this country by private management, and in Europe by the government, and that is the administration of the railroads —

Mr. ADAMS: Is the honorable gentleman prepared to prove that the German railways are inferior in their administration to the American railways?

Mr. Washburn: The gentleman did not give me an opportunity to finish my sentence. What I was starting to say was this, that there is a great business, namely, the administration of a railroad, conducted under private management in the United States and under government control abroad, and that the rate of freight per ton per mile is less in the United States than anywhere in the world.

Mr. Adams: I have passed a large part of my life in approaching these questions, and the distance, — the length of the haul, — is the crucial matter in all these things. Taking that into consideration, to the best of my belief the German railways undersell the American railways, taken as a whole.

Mr. Washburn: Unhappily perhaps for mankind, the railway system of Germany may at no distant date become seriously disarranged. [Laughter.]

Mr. Morrill of Haverhill: I wish to point out that in Germany when the railroads were constructed land was very costly, and the cost of construction, therefore, was far larger than it was in this country. In this country when the railroad systems were established the government gave to the railroads millions and millions of acres of land free of all cost, and then through the manipulation and securing of quitclaims from settlers, and in one way or another, by fraud, they secured several million more acres. Of course they can afford to do business somewhat cheaper than is the case in Europe, where the railroad pioneers found an old established country, with high-priced land and many other things that made it hard and expensive to introduce the railroad when that was invented.

Mr. Anderson of Brookline: I should dislike very much to make a point of order. I suppose there is no one here who takes so much pleasure in listening to the gentleman from Worcester as I do, — unless possibly himself [laughter], — but I do submit to the President and to the gentleman from Worcester that as this particular resolution reported by my committee was put, — not by the motion of myself or of my committee, — at the head of the list for the purpose of having it acted on at once, the discussion ought to be limited reasonably to this measure and the matters necessarily involved therein, and that we ought not to undertake to try out the connection of the Panama Canal and the German railroads and the question of wages in 1910, and all those interesting but almost entirely impertinent ramifications of the economic situation that are interesting to us all.

I make that suggestion in entire good faith, and with great respect to the gentleman who has the floor. But it does seem to me that proper deference to the vote of the Convention which put this resolution in its present place requires us to limit ourselves to a discussion of it and the pertinent amendments thereto. [Applause.]

Mr. Washburn: I agree entirely with what the gentleman has said. It has been somewhat imperative for me to recognize quite a number of gentlemen who have desired to ask questions, and a good deal of my time has been spent in that way. But I have held, Mr. President, a very firm grasp upon the last suggestion relating directly to this measure, upon which I shall now firmly seize in the hope that I may earn the commendation of the gentleman in coming very speedily to an end of my discourse. If I refuse to yield the floor from now on, I trust that any distemper thus aroused may be visited upon the shoulders of

the gentleman from Brookline, and not upon me. [Laughter.] I shall very speedily finish. I do not know, Mr. President, — I always have been a person known for brevity of speech, — there must be something about the atmosphere of this hall that makes it impossible for a man who has begun to speak ever to stop. [Laughter.]

Coming back to my proposition, which was this: That I had no doubt but what individual and corporate enterprise would permanently carry on these industries at a lower cost than the State or any municipality. I still am of opinion that in times of emergency or distress the people shall be protected against the possibility of extortionate prices and, above all, shall be assured that they shall not be deprived of the necessities of life. It is for that reason, Mr. President, that if this measure, — which does great credit to the committee, — is properly safeguarded and limited, I shall take great pleasure in voting for it.

Mr. President, I apologize, — more humbly than I otherwise might have done, and because of the suggestion of the gentleman from Brookline, — for having sought to hold your attention so long. I promise you that I shall not for a long time to come so seriously trespass upon your patience. [Applause.]

Mr. HARRIMAN of New Bedford: The resolution which is now before this Convention is one that strikes to the hearts and into the stomachs of every citizen of this Commonwealth who works for wages. You men, sir, may not know, — perhaps you know, but you do not realize, — what it is for a man with a family to earn, say, for his labor, $10 or rising $12 a week. I am not going to weary you, but I address you men in this Convention, and particularly those who have stood here and felt peeved because some have said that there might be some fault in the Legislature, and they have urged us to trust that Legislature, and then later opposed this resolution which places the power in the hands of that self-same body. They have told us in the last four months that we all owe them credit for the government of this Commonwealth; and then they rise here and tell us that they do not dare to trust this vital thing in that body.

Now, the advocates of the initiative and referendum realize that the Legislature might not respond to the needs of the people, but we realize with that weapon in our hand that if they do not respond the people themselves could do what they saw fit, — to govern themselves for their health and their happiness.

I do not want to tire this Convention with any philosophy, but it must appear to you that a great change has come over our industry. You must realize that it is not as it was fifty years ago; that the economic condition has changed, and with that change there has come a concentration of wealth into the hands of the few, and a corresponding decrease in the things of earth with the many. Now, this is absolutely true.

And I want to point out to you another phase. The worthy gentleman from Worcester has sought to argue that the working-class were better off than they ever were before. And they are, to a certain extent. But let me tell you, sir, that it is not the system of great corporations and trusts that have made the people of this Commonwealth prosperous. The only prosperity which they have received is what they have brought to themselves through the power of organization. [Applause.] The gentleman from Worcester also maintained that there

was a decrease in the supply of cattle; but he forgot to carry it beyond that point, to say that the trusts, the beef trust, — and he spoke of them, I thought, quite friendly, — he forgot to tell us that they held in their hands the power so that they were the only purchasing power, and that the farmers had to sell at prices they named. Those men also control the grain. It is unprofitable for men to raise cattle, and therefore there is a decrease in the supply. But carried to its logical conclusion, — the people were multiplying and the supply was decreasing, — let me ask you if it is not then the duty of the people to end those conditions and to supply food for the sustenance of all the people of the Commonwealth. That is the attitude that labor takes. It is the attitude, I believe, that every sensible and reasonable man must take, — that the people have a right to live. And I warn you now, — I stand not here as a prophet, but I warn this Convention, that if you do not submit some system in this State, or one that is allowed to go into effect in this country, that will curb the greed and avarice of men which are crowding down and destroying the lives and the happiness of our people, — I warn you now that of the future no man dare speak.

There are two things in society, there are two things in industry, which are the same. Either a thing must be owned publicly or it must be owned privately; there is no common ground. And I stand here and tell you that the government cannot regulate another man's business; it cannot be done. We are trying it; but we must go on to something else. And I say to you men that if private industry, if the private ownership of things that are necessary to the health and the happiness and the prosperity of our people, — fail to give them health and happiness, — then the private interests of no man or no clique of men should stand in the way of the welfare of the entire people.

Now, if this be true, — and I challenge any man to deny it, — if this be true, my fellow-delegates, let me urge upon you the passage of some such measure.

I want to say to the gentleman and others who have proposed that it was only in time of dire need, of war, or only for one or two years at a time, that under our present system, whereby men are forced to work at wages, — unless they are organized, and not so many are organized, — they are forced to work to live, they receive for wages the lowest price that the employer will give. On the other side we find that the necessities of life are in the private hands; and I say, if this condition exists, where upon the one hand the man is forced to work at wages that are not in conformity with what he needs for health, and the man for whom he works has the power to say: "You work for me or you don't work at all," and then upon the other hand we find a body of men under a system which allows them to fix the price as they see fit for their own selfish aggrandizement, — and I want to say that that condition does exist, — I ask you men in all seriousness if under those conditions dire necessity is not always present with the people of this Commonwealth.

It is true, Mr. President, that in times of war or stress it may be more acute, it is true that some special condition may bring it to the front, but it always is there. And it is a disgrace to the Commonwealth, or to any Commonwealth, that the majority of the working-class who work for wages are only two or three weeks from the poor-

house. Let them cease work, let them be sick, and immediately they go into debt, — and they never get out of it. You men know this as well as I do, and it is idle for me to repeat these things.

I do want to say something here along the line that was suggested by the ex-Congressman from Newton (Mr. Powers) when he was asking about coal and somebody thought that local conditions were not a fact. I want to tell you that I know from personal knowledge of a condition that exists in the coal industry. I know of a city, — and I come from that city, — where last winter, and later than last winter, if you called the dealers on the telephone, they asked you if you were a customer, and if you replied that you had not bought any coal, their reply would be: "We can't sell you any coal." Not because they did not have it, necessarily, but that was the excuse. And that same man would sell it to somebody else, and that somebody else would put it in bags and sell it to the working people of New Bedford for a cent a pound or more. And then they tell us that private industry does not need regulation, that only under abnormal conditions perhaps are the people in need!

Is it possible that men will stand here and say that the people of this Commonwealth are poor from choice? Will they say that they are extravagant? No, my friends, the trouble runs closer than this. Private business has almost run its length, and even the men in this Convention who apparently see the light do not dare to say whether or not the people of this Commonwealth shall have enough to eat and enough to keep them warm. The people of this Commonwealth do not want charity; they absolutely abhor it, and they accept it only because they have to. They do not want charity; and I want to say to you that one dollar spent in this Commonwealth for a family for the necessities of life, and for fuel, when that man and his family are willing and able to work, is a crime against modern civilization.

Now, you men may think this is wild, — I have been called wild recently upon this floor, — but I tell you it is absolute truth, and I ask this Convention to pass some such measure as this. It is fair to say to the cities and towns of this Commonwealth that they have a right to do it.

I often have wondered, in my wild way, perhaps, what was the difference between water running through a pipe and frozen water. I never yet could see the difference. I never could see if it was right for the city to control its waterworks why it was not just as well for them to sell ice. I have not seen yet why it was not right for them to control their gas and their electricity. But I know the reason why they do not do it, and so do other gentlemen in this Convention. There is a decision, — and I question not its sincerity, and perhaps its keeping with the Constitution, — there was a decision handed down by the Supreme Judicial Court, handed down twice, at the request of the Legislature, regarding the power of the cities and towns to sell fuel to their inhabitants.

There is one significant sentence in that last decision, which every man should realize, and it strikes at the root of the entire question. The Supreme Judicial Court said that it was reasonable to assume, and it was a fact, that if the cities and towns engaged in this business they could do it cheaper and more economically than do the private industries, and therefore it would hurt those who are engaged in those

industries. That is the reason why. And, as the gentleman has said, if private industries, the people who deal for their private gain, stand in the way of the welfare of the Commonwealth, they should be abolished and another system put in vogue.

So I trust, sir, that this resolution, in spirit, will be passed. It may be amended to perfect it. I have no fault to find with friendly amendments. But I tell you, my friends, if we are going to send this to the people, send it to them right. Do not hobble it, and do not tie it up so that even its own father would not recognize it; but be fair and be honest, as you would have men be honest with you. Send it to the people, and let them say whether or not they want it.

If any of you men believe that private interests, and the right to obtain money no matter how you get it, are higher than the peace and prosperity of the people of this Commonwealth, then vote against this resolution, or include in it some amendment that will make it inoperative.

One more thought and I have done. It is proposed to limit it to times of war. This to my mind is but a subterfuge, one that would make such a measure as this inoperative. We look to the future in the hope that war never may come again, but, sir, I am sure that after this war there will be those who will desire to make profit out of food, fuel and other necessaries of life and these men must be curbed and if their acts be hostile to the public welfare they should be treated, as they are, as enemies of the public. You do not dare to trust the Legislature which you have told us is so wise; but above all, you do not dare to trust the people of this Commonwealth. And I am commencing to believe, as a common, ordinary citizen of the Commonwealth, that they do not dare to trust anybody with any kind of authority which may interfere with profits and interfere with the system that allows profit to be made out of the labor of human beings.

Let me tell you, my friends, that the working-class in this Commonwealth are thinking, and they are realizing that they have a right to coal, that they have a right to food; and they realize that when their children are sick they cannot call a doctor and have to buy a cheap drug in an endeavor to protect the lives of their children. I appeal to you as I never have appealed before, to give to the people of this Commonwealth an opportunity, — an opportunity to protect themselves against extortion and against the greed of a few men that have made in the past, and will make in the future, as no other force has made, for social unrest in this Commonwealth. [Applause.]

Mr. Clark of Brockton: It has been with no small degree of pleasure and satisfaction that I have noticed during this somewhat protracted discussion that the members of this Convention who have made remarks in opposition to this resolution invariably have preceded those remarks with uncontrovertible arguments in favor of the proposition. It goes to demonstrate that I was absolutely correct when at an earlier period of this Convention, when I was a younger man by considerable, I stated that I had the fullest confidence in every member in his honesty of purpose, in his sincerity of mind, and this goes to show to-day that I was absolutely correct, because no man here to-day or even in discussing this question at all has launched out to criticize the resolution or to make, — note I do not say arguments against it, but remarks against it, — but has preceded those remarks with argument in favor of it.

Now, Mr. President, I think from the remarks that have been made here to-day that every member of this Convention regards this proposition as one of the major questions presented to the Convention for its consideration, and I want to say right here that from my contact with my constituents I believe that they consider it one of the major questions. In fact, I am warranted in saying that many of my constituents who perhaps might be opposed, and perhaps are opposed, to the initiative and referendum, are in favor of this proposition. Men who I did not suppose would favor it have been to me and said: "Dr. Clark, I hope you will stand for that proposition that gives the State, the cities and the towns an opportunity to protect their people."

Now, in order to simplify this question as much as possible, permit me to state that I believe the resolution may be considered under two propositions. First, does this Convention deem it prudent and expedient to grant the Legislature authority to empower the Commonwealth and any or all of its political subdivisions to engage in any of the activities included in this resolution? And right here let me say that by some, perchance, this may be considered revolutionary, and in fact it has been intimated by some of the speakers that it was in a measure revolutionary. One member of this Convention, now absent, that eagle-eyed, keen-minded man, with a broad comprehensive vision, who usually sits down in the front part of this division, — I refer to the gentleman from Waltham (Mr. Luce), — the other day characterized the initiative and referendum as revolutionary. But, gentlemen of this Convention, he ought to know with his breadth of vision, his keenness of intellect, his ability to apprehend and comprehend, he ought to know and does know, if he would admit it, that we already are passing through a revolution in this country, in this Commonwealth. Yes, sir, we are in the midst of a revolution. It has been largely peaceable thus far, but not altogether. It may not continue always as peaceable unless we provide for the storms that threaten and appear, as I remarked the other day, on the western horizon.

Let me refer, gentlemen of this Convention, to some of the revolutionary methods and practices, some of those that characterize this revolution. The time was in my earlier days when I lived on a farm up in northern Vermont and was struggling to get an education that I might attend this Convention, perchance. [Laughter]. The law of supply and demand was an important factor in determining the prices of commodities; it was a large factor. That day has gone by. To-day it is a factor of insignificance, almost. Vast accumulations of wealth in the hands of a very few people have prevented it. When a company of men, a corporation or a single man here in Boston can go into northern Vermont and buy every potato that is for sale there in three or four different counties, cannot he corner the market, cannot he control it? Is there any such thing as supply and demand? He has the means of storing those potatoes and holding them. He bought them last fall at ninety cents to one dollar a bushel, as I told you here in discussing another question. Before those potatoes were removed from the premises on which they were produced those potatoes were sold at two dollars a bushel. As I said to you, sir, when they reached us we paid a little later three dollars and four dollars a bushel.

Now, if supply and demand is not a factor in determining the prices of a commodity, there is another factor that in earlier days entered

into this matter. That was competition, — no longer a factor in regulating the prices in the necessities of life. I need not tell the intelligent members of this Convention that the harvest of wheat in the western country is in the hands of a very few men soon after it is harvested, and much of it before it is harvested. I need not tell you that the potato crop of Maine is now in the hands quite largely of a very few men. I need not tell you that the egg product of this country is in the great cold storage plants that are owned by a very few men. Gentlemen of the Convention, the great warehouses, the immense cold storage plants have come and enable the man with the means, with the wealth, a large part of the wealth of this State, to take the necessities of life and hold them and dole them out by the handful, by the quart, as they have been doing the last twelve months.

Let me refer to a single instance right here. I am not going to detain you with many of the details, but I have been told by a person who I believe was reliable, that at one time during the early part of the past summer a friend of his went into a big warehouse in the Commonwealth of Massachusetts, not in the western part, and he saw there in that great warehouse piles of sacks piled to the very rafters. He said to his friend there, "What are in those sacks? What do those sacks contain?" "Beans," — beans, gentlemen! "How many bushels of beans have you?" "Fifty thousand bushels," and there were no beans to be had, scarcely. Why? Why, because the supply was exhausted, there was a shortage. He was asked by this friend what they were holding those beans there for. "For a price." For a price! That is where the screws were put to us. They had us by the throat. We were powerless. We paid it. We bought them by the pint, by the quart. Many of you men could buy them by the bushel or by the half bushel, but many of us had to buy them by the pint. Sometimes we got a quart when we got our week's salary.

Now, I have said that the people want this proposition, and I am pretty thoroughly convinced by what I have heard here that the majority of the members of this Convention propose to give it to them in some form. It is only a question of form. Now, is there any great danger in giving it to them as it has been given to us? If the former proposition, — that is the one I have just been discussing, — be answered in the affirmative, as I believe it will be most emphatically, then we naturally would proceed to determine how broad the latitude of this authority should be. Now, note, gentlemen, that we are not giving to the Commonwealth, to cities and towns authority. We are authorizing the Legislature in its judgment, in its wisdom, in its discretion after deliberation to proceed to describe a method by which the towns and cities, and perhaps the Commonwealth, may engage in this business.

After the Legislature has given this authority then it devolves upon the cities, upon the towns again, before they enter upon this work, to deliberate either by referendum or by the city government, to again study carefully whether it better be done or not, and if so, by what method it shall be done. So, gentlemen, we are not jumping into this matter. We are safeguarding it. It is coming before a body of men after us who perhaps will be as competent as we are to judge of the necessity of it under the conditions that shall then obtain, and then

the cities and towns will deliberate upon it again. I think we need have no great fear in adopting this resolution pretty nearly in its present form. I know something of the Legislature. I have had the honor, — and the great honor, — of serving here eight years, and the Legislature always has been considered pretty conservative. In fact I have been criticized more for my conservatism than I have for my radicalism, and so have a large part of the members of the Legislature each year that I have been a member of it. One of the great facts that we meet is that men are taking advantage of their fellow-men beyond all reason. The man who makes the necessity of his fellow-men his opportunity to gratify his cold-blooded, heartless greed by applying his extortionate schemes to take the last cent that he can squeeze from him, in my humble opinion is not a patriotic citizen. It was remarked by the gentleman from Worcester (Mr. Washburn), who was speaking at the time of adjournment, that we were not going to suffer seriously during these times, that no one starved to death or froze to death during the shortage of coal in 1914. If the gentleman had accompanied the physicians of his own city or the physicians of my city to many a sick room that he might have seen, he hardly would have said that. I do not say that they actually froze to death or actually starved to death, but I do say, — and many another physician would bear me witness to this fact, — that there were children and women who went so low through hunger and the want of fuel in their homes that their chances of life when sickness overtook them, their chances for recovery, I should say, were largely decreased, and I think that I was able to point to two or three instances where the lack of food and the lack of heat in the house was the determining factor in causing the death of these people. It is not necessary that a person actually starve to death to die from famishing.

I am not in favor of displacing all our middlemen, nor any very large percentage of them, perhaps. I do not believe in it. I am not a socialist to that extent. The question has been asked: What are we going to do with these little corner grocerymen when the city takes the matter over? If the city takes the business over or the town takes it over to any extent, it must have men to handle those things. These men, being acquainted with the work, undoubtedly would be selected so far as they were needed. They would not all be needed. Probably fully 33⅓ per cent, and perhaps more than that, of the middlemen are uncalled for and not needed in the distribution system. These men who are displaced would find ample opportunities in the fields of production and in the larger fields of distribution. They would not be out of employment. The fact of it is large numbers of them are idle much of the time and because, — and here is a point worth noting, gentlemen, — because of the large number of fruit stores and little groceries a large amount of our product goes to waste. I asked one of the fruit dealers in my own city a few days ago what percentage of the fruit he had brought into Brockton probably was wasted because of decay; and he said probably 25 per cent or more, and in many of the stores I have made some investigation, not extensively, and I found that a large amount of our fresh vegetables go to waste and are thrown away. There is a large waste, perhaps on the whole at least twenty-five per cent, in all our fresh vegetables and in our fruits.

If this produce were handled judiciously by the cities and towns

so as to make a much less number of markets in which it was to be sold, there would be much less waste along this line.

Now, gentlemen of the Convention, I insure my buildings for what purpose? Not because I purpose to burn them, not because I expect they will burn, not because I want them to burn, but it is an insurance against something that may happen, something that does happen occasionally. I have a lock on my door, if I do live in Brockton where the people are all honest, I have a lock on my door. What for? Because I expect a burglar would enter that house while my family and I are away to-day? No. I have that lock on my door because of a liability, because of a possibility that a burglar might come there. One instance more. I met a gentleman the other day who told me of an instance connected with his father's life. His father was an official who had the care of the town in his hands so far as law-breakers were concerned, and he enforced the law to a greater extent than some officials do to-day, and the law-breaking crowd got down on him. They determined to frighten him from the work. They wrote him anonymous letters saying to him: "You desist from prosecuting so-and-so or we will poison your heifer, we will burn your house," and this thing and that thing. His reply through the press was: "My cattle are insured, my house is insured. Poison and burn if you wish, but I shall do my sworn duty." Insurance amounts to something, and insurance by the passage of this resolution, gentlemen, will do something. It is an insurance against things that are happening, that are going to continue to happen persistently unless we have the insurance. If we pass this measure and have the insurance, do you not think that the middleman has got sense enough to regulate his conduct, to trim his sails, to plan his business so as not to be caught? Yes, gentlemen, I have no fear of the towns and the cities having to go into this business extensively, if we pass it. I would not say it is a club, — I do not like that term, — it is a reminder of insurance. Someone has said that after the war conditions will be normal, all will be serene and happy. Oh, I wish that I could indulge in that thought myself, but I believe that these middlemen, — I am not referring to all the middlemen, large numbers of them are honest and dislike the unfair competition that they are up against, — I believe that these men to whom I have referred as cold-blooded, greedy individuals, having tasted blood will come back after the war, when the United States Government lets up on its regulations. Massachusetts should prepare itself for the conditions that will obtain at that time. I hope that we shall give this matter and two or three other matters to the voters of Massachusetts to be placed on the ballot for next November. They expect it. They will be satisfied with nothing short of it. If we do not do something along this line, better would it have been for this Convention had a millstone been hung around its neck and it had been drowned in the sea of oblivion.

Messrs. George W. Anderson of Brookline and Edwin U. Curtis of Boston offered amendments cited at the beginning of the chapter.

The debate was continued Friday, September 21.

Mr. Brown of Brockton: I am in favor of placing the principle in this resolution on the ballot. I wish to make it clear that we are not concerned with the details of what the Legislature may do under this

resolution. If we were here to settle all such details, and to consider what emergencies might arise to be settled under this resolution, I confess that I should not be prepared either to give my vote now or perhaps next Wednesday, because I consider it a momentous question. I agree with the gentleman from Worcester (Mr. Washburn) that it is greater than the initiative and referendum, because it affects the very fabric and the very foundation of the fabric of our government. The question is, shall we enlarge the power of the Legislature to the extent which is reported by the committee? I favor that without any limitation. That the phraseology may be corrected, the committee has so said; that it should be adopted in its fullness is what I advocate.

The question then that comes before us and should concern us, and does concern us, is this: Is the Legislature to be trusted? Is it safe to delegate this extension of power to the Legislature? We should keep in mind that it has been almost an open question in the Supreme Judicial Court whether or not this power is not already in the Legislature. I should contend that it is. I should stand with the opinion rendered by Chief Justice Holmes. I should find it in the large delegation of power incident to the conserving of the common welfare. But the majority of the court has said otherwise, — that the Legislature does not have this power; therefore if we want the Legislature to exercise that power now is our opportunity. If we do not give it to the people at this time it cannot come before them again for at least three years. Who is there here who cannot feel the immensity of what might happen in the course of three years?

Now as to the wisdom of the Legislature. I think the gentleman from Worcester (Mr. Washburn) missed, either intentionally or otherwise, the point of the question that was raised by the gentleman from Quincy (Mr. Adams). He rose to ask, as I understood it, wherein the Legislature of Massachusetts was inferior in mentality to the Parliament of Great Britain, and coupled with that the question as to whether or not the Parliament of Great Britain had used that power wisely. Now, the only difference between our country and that of Great Britain is that we place limitations on our Legislature by a written Constitution. It is true that to that extent we limit the power of our Legislature, but aside from that I should be inclined to agree with Talleyrand, who said that he could not see much of any difference; that the liberties of the English people, like the liberties of the American people, were based on the Magna Carta and trial by jury; that if you could find in the English Constitution something monarchical you could find also something republican and if you could find something republican in the American Constitution so you could find something monarchical. Is there any doubt of the truth of this observation? Does anybody question the power of the executive of this Nation in its absence of any limitations as compared with the limitation that has been placed on executives in monarchies? Are we not face to face with the fact that the Nation, through its President and Congress, is exercising at this time the power which we propose shall be exercised in Massachusetts by the Legislature? In Great Britain, Lloyd George went to the coal mines because there was a difference of opinion on wages between the men and the masters. He looked at their books and he settled the difference, as he thought. But it did not stay settled. Again the men made a demand. Again

the Nation was threatened. Again went Lloyd George to hear both sides. The masters refused to show their books. They refused in any way to assist him to settle the trouble. And then what? The Nation acted. The Nation took over the coal mines, because those labor men said, and it is the heart expression of the labor movement in this country to-day: "We don't object so much to our conditions, we don't object to living from hand to mouth, but we do object to the profits of our sacrifice that go to the few. We will work for any wages if it is to sustain this government, but we will not work to enrich the few." We have to-day, gentlemen of this Convention, these conditions in this country. The Legislature will not rush to place before the people some method of going into every kind of business. Nobody is clamoring that the city of Brockton will ask to go into the drug store business, as the gentleman from Worcester suggests. As well might he say that somebody is clamoring that the whole State should go into the business of wheeling a wheelbarrow. He might as well carry it to an absurdity. No one contends that this power is to be used except when there arises a necessity that it shall be used; and the question is: Shall we place that power in the Legislature?

The gentleman from Norwood (Mr. Willett) asked: "Can legislation in any way affect wages?" Is there any question that legislation can affect conditions? Henry Endicott went to Lynn yesterday, and settled a strike condition that has been there since April. It was in the shoe business. And how did he settle it? By prescribing the same working agreement which is used by the greater shoe organization, the International Boot and Shoe Workers. But how comes Henry Endicott to be recognized by both sides? Henry Endicott's shoe manufacturing firm is not under organized labor; it cannot be organized. Why? Because labor organizations cannot give the men any better conditions than they have got now. That corporation has solved the problem. They are giving living conditions; they are giving benefits in case of accident. An operative of whom I know, had received all the benefit on account of a sprained ankle in that establishment to which she was entitled; but she was given two weeks more. Humanitarianism was there, as it is in every attempt of the establishment to bring about better conditions. An operative can get a generous meal there for fifteen cents. He need not disturb his wife in the morning for the dinner-pail. At the factory he will have a better dinner for fifteen cents from that corporation than he probably would have at home. If one firm can do this and meet competition in selling its product who will say that the State cannot create similar conditions?

The gentleman from Worcester (Mr. Washburn) said that it was very easy to talk in this Convention; he said there seemed to be a sort of an overshadowing influence. Well, why not? The Scripture says: "Where two or three are gathered in My name there will I be in their midst." Are we not gathered in His name when we are dealing with the problem of better government? Is it not an attempt to reproduce Divine government, which is even and exact justice? We are in a transition state, the world is trying to evolve something better. Why not send to the people something which shall awaken their thought?

The gentleman from Haverhill proposes as an amendment, — "except that the State shall not go into the liquor business." I think it is one that the State should go into. The State should take charge

of the liquor just as it does take charge of the use of dangerous weapons. It now licenses the sale of liquor. Why not require a license to drink it? Why not have a license system so that a man cannot buy a drink unless he can show his license card?

Corporations organize a part of the collectivity and exercise functions for their own profit; this resolution gives the Legislature the power to place the whole collectivity where it can benefit itself. There is no desire in the labor movement to put this State into a collectivity. The old Populist party, — a labor party, — was not a socialist party; it was distinctly an individualist party. It came into existence as a protest against monopoly. Kansas threw aside her 40,000 Republican majority, threw Senator Ingalls into the discard, and took Peffer out of the editorial den and pushed him into the senatorship. They were then protesting against monopoly. They prophesied what would be the result of the conditions that then prevailed, and their prophesy is fulfilled but it is too late to destroy the collectivity of ownership embodied in these corporations. They are ready now to take over. But there is a vast difference between such action and the collective ownership of *all* the means of production and distribution. Eugene Debs in 1896 was in St. Louis. The mild-eyed disciple and apostle of grape juice from the Nebraska flats captured the People's party, with a full belief that the Democratic donkey could digest it; and the Democratic donkey has had a great deal of indigestion ever since from trying to assimilate the new thought which the Populist doctrine carried into it. That is the history of that movement, — the passing of the People's party. Debs at that time said: "Now I will found a party that never can be taken over. I will take the collective ownership of all the means of production and distribution." That is socialism, but the labor movement is *not* in favor of it. A few years ago it would consume at least one or two days of its Convention debating it from the economic standpoint. It has passed out of labor conventions. The socialist movement has not the strength that it once maintained. The men in that movement who did not ever go the whole length are gradually being absorbed into this half-way proposition of attempting to have the State legislate relief in some way.

If you adopt some of the measures that are before this Convention, — I am not going to distinguish between them, — but if you will adopt measures which will allow in some way the elements which are dissatisfied to organize to obtain redress, we shall get things peacefully. The People's party movement of 1890 to 1900 concerned the farmers mostly, the wage-earners a little, the middle-class not at all. The doctor, no. The lawyer, no. The schoolmaster, no. The man with an income, no. It had not come to that point. The absorption of wealth into the hands of the few had not gone far enough to touch the incomes of the lawyers and the incomes of the doctors. The People's party prophesied that in time it would. Now it has reached them. The middle-class is awake. In 1890 I thought monopolistic trusts should be destroyed; in 1917 I see that they are utilized by public control and may pass into public ownership.

This progress, these revolutionary periods that the gentleman from Quincy has spoken of, can be traced readily by students of history. They can trace waves coming and going, hardly showing where the line of one wave mingles with the lines of other waves, but ever and

forever the great ocean of thought is surging around men to carry them up into better conditions than what they possess. You may safely trust the people of Massachusetts, and the Legislature, retaining your representative government. There is no escape from the power of evolution. The unwinding across the ocean is a prelude to the unwinding elsewhere. If autocracy is doomed in one place it is doomed everywhere.

I have tried to-day, as I tried the first day I came into this Convention, and on other days that I have spoken, to unify this Convention.

Mr. LUMMUS of Lynn: This amendment as reported by the committee is one in which I am very much interested. It has been said upon this floor that in time to come the Supreme Judicial Court may have occasion to refer to these debates and to the reports of chairmen of committees as to the interpretation of words that perhaps may have a somewhat undefined meaning, and therefore I feel that it is important in one aspect of this resolution that the chairman of the committee reporting this resolution should define the meaning of one or two words in the resolution. I refer to the words near the close of the resolution "like means of producing." The word "producing" is a word which conceivably might extend to all kinds of manufacture. I have reason to believe that the word as used in this resolution is not intended to put the Commonwealth or its municipalities into the business of manufacturing in any broad sense, and for the purpose of the record, in order that we may be sure what we are voting on, in order that the Supreme Judicial Court in the future may have the means of knowing what we thought we were doing, I should like to have the chairman of the committee reporting this resolution tell us exactly what is intended to be conveyed by the words "like means of producing."

Mr. ANDERSON of Brookline: I am very glad to state, — or restate, — what I think is the view of the committee, certainly my own view, of the proper construction of the last sentence of this proposed resolution. I am looking now at the redrafted form which is on page 2 of this calendar. I may digress to say that the changes in that form are three only. First, we have changed the form so as to cover a statute duly enacted and to avoid the possible inference that this was intended to be exclusively an additional grant to the Legislature and not to cover a statute enacted by initiative and referendum. Second, we have put in, at the suggestion of some gentlemen who thought that "food-stuffs" was not broad enough to cover the obvious necessity of providing feed for cattle, — cattle, producing milk absolutely essential, of course, for the life of children, — by adding after the word "food-stuffs" the word "feed." Third, we have put in, in deference to the view of certain members of the Convention, particularly to the view of the ex-Governor, the delegate from Arlington (Mr. Brackett), the words "paying reasonable compensation therefor." The rest of the section stands as in the original report.

Coming now to the question of the delegate from Lynn, let me say a word as to the significance of the last sentence of this proposed resolution. The power granted therein is in no proper sense a mere emergency power. The emergency power is intended to be given in the first part of the resolution, and ends with the word "therein."

The rest of the resolution is intended to be an addition to the constitutional power of the Legislature to increase the trading functions of the Commonwealth and of the municipalities thereof.

The last sentence deals with the providing of, broadly speaking, distribution facilities. It reads: "The Commonwealth may by statute duly enacted authorize the establishment, maintenance and operation [by the Commonwealth, cities and towns, 'any one or all,'] of markets." They already have that power, — "Docks"; they may now do that. "Fuel and coal yards;" they have not that power. "Elevators," doubtful. "Warehouses," arguable but doubtful. "Canneries," doubtful. "Slaughter-houses," undoubtedly the power now exists. In other words, we undertook to put all those new devices of distribution, to wit, — fuel and coal yards, elevators, warehouses and canneries, — into the same category that markets and docks and slaughter-houses always have occupied; means affected by a public use and therefore within the constitutional power of the Legislature to provide. Then we added "and other like means for producing, selling and distributing the necessaries of life."

I come now to the particular question asked by the delegate from Lynn. It is manifest to any careful observer that the metropolitan district is approaching in the supply and distribution of milk, of ice and of coal, perhaps of wood, — the same kind of problems that we faced years ago with relation to water, to gas, to electricity, to sewerage. The purpose of this resolution is to give to the Legislature undoubted power to deal with those problems. Suppose it is found necessary to provide a metropolitan milk distribution company under public regulation, or under State ownership, operation and control; in order to handle milk economically and efficiently you must do something more than merely bring it in and distribute it. As one of the milk contractors described the situation to me at one time: "There comes a period of hot weather in Boston; everybody wants milk; we have to wire to our producing sections to ship all the milk possible to Boston; it comes here and goes into the restaurants, hotels, and homes, meeting the hot weather demands. But the wind shifts to the east and comes in off the ocean; everybody is chilled; there is no demand for milk. We wire our supply agents to hold back the milk and throw it into the creameries." In other words, the manufacture of milk into butter and cheese is an absolutely necessary business incident of the collection and distribution of milk. If you do not put in "manufacturing" or "producing" or some equivalent word you have prevented the distribution.

So in less degree as to wood. If wood comes here in logs of four foot length there would have to be some provision for changing them into kindling and fire-place length, etc.

So, after careful consideration, the committee reached the conclusion that it would not recommend to the Convention the submission of a resolution which might put the Commonwealth and the municipalities into general manufacturing business; that it would recommend an increase of legislative power, so that these additional distribution facilities, in some or all of which manufacturing or producing may be a minor incident, should be within the legislative power. Such is the view of the committee, — as I understand it, — as to the significance to be attached to the word "producing." It is used in a very limited

and narrow sense. "Like means," I may say also, means such facilities as are "*like*" markets, or docks, or fuel, or coal yards, or elevators, or canneries.

Canneries I might say something about. Canneries have become a very essential part of the business of marketing and distributing a great many of the most desirable but perishable food products. It is highly desirable that there should be a large number of farmers owning their own land, with small capital, in the business of producing fruits and vegetables which should be canned and used to supplement our food supply. That can be done only by having canneries, in proper places, open on proper terms, to people of small means. There is much reason to believe that, with our teeming and increasing city population and our sparse and inadequate food supply from our agricultural sections, shortly we shall find it desirable to give serious consideration to the question of State canneries.

Canning is plainly not merely the collection of food and the distribution of it; it is in part a manufacturing process, a producing process. Such *incidental* "production" or manufacture of asparagus, or strawberries, or corn, or beets, and all the rest of the vegetable foods and fruits which now are canned in such large quantities, should plainly be within the power that the Legislature may exercise if it finds it necessary or desirable thus to assist in the production and distribution of food or other products.

Mr. LUMMUS: May I ask whether the gentleman has taken into consideration whether the word "preserving" would not include all that he wishes to accomplish by the word "producing?"

Mr. ANDERSON: I am not sure that we considered the word "preserving" in committee; but I am very clearly of opinion now that it is not broad enough. For instance, if you limited yourselves to preserving milk it might be sufficient to put it into cold storage, but I do not think it fairly could be said to cover the manufacture of milk into butter and cheese. I think perhaps "preserving" might be broad enough to cover the process I have just stated as to fruits and vegetables.

Mr. LOWELL of Newton: I should like to ask the gentleman whether under the term "producing" he would say that the Commonwealth or the cities and towns could grow vegetables and go into the business of market-gardening.

Mr. ANDERSON: My answer to that is no. I think I said something the other day which was inconsistent with that answer. But I think when you take into account the recital of the words markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses, and then add to those "like means," that you have limited "producing" to enterprises which are in essence and in general scope distribution means and not primarily and fundamentally producing processes.

Mr. LOWELL: I understand the gentleman to say that he wishes the power in the Legislature to allow the Commonwealth or cities and towns to produce milk.

Mr. ANDERSON: I did not so state, Mr. Chairman, to-day. If the gentleman goes back to what I said the first day I spoke he may find I stated the proposed grant too broadly. What I said to-day in substance was that if it be found necessary, as it may within the reason-

able contemplation of us all, to have a metropolitan milk distribution station, so that there shall be a monopoly, or if not an *entire* monopoly, to a large degree a monopoly of the milk distribution in this metropolitan section, — with the milk now coming from as far away as Canada, — then when the milk was here it would be necessary in order to meet your hot and cold weather waves to allow change or manufacture which was in its nature production; and we used the word "producing" as being on the whole the safest single word to cover this obvious need.

Mr. LOWELL: I should like to ask the gentleman whether this word "producing" does not do one of two things, either does not add anything at all to the rest of the resolution or adds a great deal too much. It does not strike me that getting together quantities of milk from various parts of the country and keeping them in proper storage is producing, so that it does not seem to me that it meets that part of it. On the other hand, producing it seems to me, certainly would cover market-gardening or keeping cattle, and anything of that kind.

Mr. ANDERSON: I think I should agree with that definition of the word "producing," if it were not limited by "like means" and did not refer back to a whole category of appliances which essentially are distribution appliances and not growing or primarily producing appliances.

Mr. LOWELL: Another criticism, perhaps it is merely a verbal one, is that there is nothing in all of these things which are specified, markets, docks, fuel, coal yards, elevators, canneries, warehouses, slaughter-houses, which is producing at all, so that the word "producing" does not refer to anything which has gone before but adds distinctly a new element to the matter, as it strikes me.

Mr. ANDERSON: I think the gentleman is in error. I think that in canning there is producing. I think slaughter-houses are engaged in a species of production, taking the raw product and manufacturing it into various things, some of which are food and some of which are incidental. I think therefore that his construction is not sound. If anyone can put within reasonable limits a statement which more accurately and adequately expresses the purpose of the committee, I shall be glad to have it. But I think that reasonable doubts should be resolved in favor of the wider grant of power to the Legislature, which, as you know, I think is a wise and safe body.

Mr. LOWE of Fitchburg: I should like to ask the gentleman if he thinks that this manipulation by the State, this distribution by the State, would increase the product. I believe that the serious proposition before this State, in fact in the whole country, is the question of product, — producing. It is not so much the question of distributing milk as it is of producing the milk. Why, Mr. Chairman, the cattle are disappearing from our State by hundreds, thousands. Our lands are becoming unoccupied. We are not producing. What this State needs is a larger product. I think you can trace this out to a danger of famine in this country if it continues. We talk about developing unoccupied lands. Why, gentlemen, it is not necessary to develop unoccupied lands. Lands that have been occupied are being deserted, and the raising of milk and the raising of vegetables and the raising of fruits for canning are being neglected. It is a question of producing food-stuffs and in order to increase the production of necessities you have got to encourage the producer.

Mr. ANDERSON: I am quite in accord with much that the gentleman from Fitchburg has said. He will see that the committee of which I have the honor to be chairman gave serious consideration to that problem if he will look at No. 321, which will be here shortly and will indicate ways in which we thought the Commonwealth possibly might help to increase agricultural production. Nevertheless, it is true that the marked phenomena in our American industry for more than two generations, had been, — *excess* production, *excess* cost of distribution, and constantly engorged markets. I quite agree that if we are embarked on a career of persistent militarism, in a struggle perhaps for a hundred years, that the question of agricultural production is a vital question. But it clearly is true (take milk for illustration) that the cost of collecting and distributing the milk, the spread between what the farmer has got and what the consumer has paid, — has been increasing for years. The contractors say they have not got rich; I do not *know* that they have. But it is clear that we ought not merely to consider the problem of increasing the necessaries of life, — to production; we ought also to provide power for adequate legislative treatment of the machinery of distribution. That is what we now are undertaking to do by this resolution; that is all we are undertaking to do. I hope and expect the gentleman from Fitchburg will give us his entire support.

Mr. LORING of Beverly: I wish to ask the gentleman if he did not mean collecting and manipulating.

Mr. ANDERSON: I think "manipulating" has a sinister meaning, which I should dislike to apply to the comparatively innocent job of turning milk into butter and cheese. I object to it. It smacks of high finance; it reminds me some of the recent railroad investigations. I object to it.

Mr. LORING: Is not that really what is meant by your interpretation, that is, collecting the product and turning it into some other form for distribution?

Mr. ANDERSON: I do not think "manipulating" is a proper word. I think you could make something of an argument for saying collecting and manufacturing, other like means for collecting and manufacturing, but you would get into worse trouble than you are in now. "Producing" is the most fit word we could think of, open to the least number of objections. I quite agree that it does give the Legislature, if it was a wicked or incompetent body, a chance to go, or authorize the Commonwealth or the State to go, somewhat more broadly into business than we intended when we drafted this very, very modest resolution, — which is criticized by the acute and thorough thinking gentleman from Quincy as being in the nature of a compromise.

Mr. MONTAGUE of Boston: I desire to ask the gentleman if the committee considered the use of the word "procuring" instead of "producing."

Mr. ANDERSON: I do not think we did, because I do not think it covers the process, for instance, of manufacturing excess milk into butter and cheese. Procuring milk would be going back into the country for it; it might be open to the possible construction of buying a farm and raising milk. We did not mean that. Procuring is a pretty broad word.

Mr. HERBERT A. KENNY of Boston: I should like to ask the chair-

man of this committee to take the question of a provision dealer, for instance, in my ward, who has built up a business, which it has taken him twenty-five years to do, and has created a "good will" in the ward. If the State should step into that ward and wipe out that man's business, is there any provision in this to compensate that provision dealer, fish dealer or grocery man, who has built up a respectably good business and has the respect of the people of the ward?

Mr. ANDERSON: It seems to me that the answer to the question is that the gentleman has confused constitutional power with the legislative use of that power. There is nothing, and there ought to be nothing, in the Constitution dealing with so minor, improbable a result as that. The gentlemen present, — most of them at any rate, — will remember that when it became necessary to exercise the undoubted constitutional power of the Commonwealth to take additional territory for a metropolitan water supply, a new rule of damages was provided for certain of the towns up in Worcester County; damages were allowed for businesses wiped out, and not merely for the value of the property taken. Now, it is quite possible that the Commonwealth, within the next generation, will face a similar problem and deal with it in a similar way. There is undoubted constitutional power, when it exercises any of these contemplated additional grants, to provide a rule of damages which shall be just. In England I have noticed recently that they even have had in contemplation providing compensation for the public houses, the liquor licenses which are taken over. Take the fish business. That is another food producing industry which I forgot in my previous enumeration. I sat last night in a conference concerning the present status of the fish business. The condition of that industry is becoming a critical question all over this country. It is now under investigation by the Department of Justice inquiring whether certain schemes are obnoxious to the Sherman Act.

Without going into that aspect of the problem, it is enough to say that all these perishable food products, like fish and fruit and milk and ice, are bringing to bear upon our growing communities a set of problems very like the sewerage and the water problems that we have faced hitherto; that there ought to be, plainly, additional power vested in the Legislature to deal with them as they ought to be dealt with. We are undertaking to provide such power.

Mr. DRESSER of Worcester: Do I understand that if this authority is given it would authorize the taking over of existing plants, etc., by eminent domain, and if the resolution does not cover it ought it not to cover it? Ought there not to be power to take an existing dock as well as to establish a competing dock?

Mr. ANDERSON: My view is, — I am not sure that we discussed that in committee, — that when in this sentence you provide that fuel and coal yards, canneries, slaughter-houses and other like distribution means, which would include milk distribution, fish, ice, etc., are made public uses, the right of eminent domain accrues by necessary implication. I take it the gentleman from Worcester (Mr. Dresser) would not have the remotest doubt of the present constitutional power of the Legislature to provide for the taking of the center of Worcester for a public market. The idea of the committee was to put the rest of this category into the same field of power.

Mr. LOWELL: I should like to ask the gentleman whether he has

considered, instead of the word "producing," the words "preparing and preserving." That suggestion was made to me by some one else, but it seems to me it would cover the ground.

Mr. ANDERSON: My own offhand impression is that those two words are the least undesirable of the proposed substitutes for the word "producing;" but I still stick to my first love; and think that "producing," limited by "like means" and by the enumeration of devices and appliances, — is safe language; safer than "preparing and preserving."

Mr. BROWN of Brockton: In line with the question that was asked by the gentleman from Worcester I would ask the chairman of the committee and the attention of the gentleman from Worcester as to whether or not the policy of Massachusetts is not clearly established. Has there ever been a case where Massachusetts has voted to go into business in competition with business already existing that she has not made provision that the existing plant must be taken over? I remember in 1891, when we first put in this question of municipal ownership and our bill was going through, that it was the gentleman from Boston, the ex-Mayor of Boston (Mr. Quincy), then a member of the House, who rose to put in that very provision, providing that the existing plant should be bought. At that time we tried to fight it. We thought we would not. We thought it was just. Now, there is a precedent for Massachusetts' policy. I want to ask, has not that established the policy of Massachusetts, that it will not take even the corner grocer out of business unless it does him justice?

Mr. HOBBS of Worcester: This discussion has ranged over a fairly wide field, which has seemed at times to be a trifle remote from the subject immediately under discussion. I want to approach this matter from a standpoint somewhat different from that of some of the speakers who previously have dealt with it. This proposed amendment, based upon a large number of propositions for amendment of the Constitution, was brought forth by a situation that has engrossed the attention of both the State and the National Legislature now and previously. Some years ago, when the coal strike was on, this subject was brought up, and, with an exigency of even greater and more far-reaching consequence, it comes up again. Already it has produced legislation, both State and National, and this proposed amendment to the Constitution is more or less in line with those acts of legislation.

In 1915 the Commonwealth provided for the establishment of public markets. Previously to that time it had authorized public markets from time to time whenever a city or town manifested a desire to have one. A general act was passed in 1915, and under that act I think some public markets have been established, not any very large number, it is true, but still public markets have been established. During the last legislative year several propositions were brought up before the Legislature. The first was in response to a request from the Governor for greater facilities to provide for the better defence of the Commonwealth in time of war. That is now contained in the Acts of this year, chapter 342. In the sixth section of that act it is provided that when the Governor believes it necessary and expedient for the purpose of better securing the public safety or defence, or the welfare of the Commonwealth, with the approval of the Council he may take possession "of any cattle, poultry and any provisions for man or beast,

and any fuel . . . which may be necessary or convenient" not only for the military and naval forces of the Commonwealth but "for the better protection or welfare of the Commonwealth or its inhabitants." And it provides that he may employ that property for the service of the Commonwealth and "may in particular, when in his opinion the public exigency so requires, sell or distribute gratuitously to or among any or all of the inhabitants of the Commonwealth anything taken under" that law "and may fix minimum and maximum prices therefor." That is a power very similar to what is contemplated by this resolution. The constitutionality of the act was questioned seriously in committee, but the Legislature passed it, believing that in times of public exigency a too literal interpretation of the Constitution should not bar salutary action, and that such a public exigency exists at the present time.

They also passed a statute, which is chapter 264 of the Acts of this year, authorizing cities and towns to make certain emergency appropriations in time of war. This act authorized cities and towns, among other things, for the purpose of conserving the food supply "to do such things as they may deem necessary to assist in the raising and distribution of food products." I call to the attention of this Constitutional Convention the broad and ample language, the broad and ample authority which the Legislature gave to cities and towns for the purpose of meeting this emergency. It did not undertake carefully to define what they should or should not do. Realizing that an emergency existed, it gave them a free hand to go ahead and do what they could to produce and conserve the food in their jurisdiction, and this power I do not think has been seriously abused. Certainly if it has been abused no instances have been called to our attention as yet.

In a time like this it is advisable perhaps for this Convention to weigh seriously the exact limits of the authority which they would grant, but the Legislature I think acted wisely in throwing the doors wide open and giving the cities and towns ample power to do what they saw fit, putting as little restraint on them as possible and leaving to their own good judgment what they should or should not do.

Congress also has had the subject before it, and I think that the precise legislation to which I refer is fresh in everybody's memory. The act to provide for the National security and defence, the so-called Food Control Bill, was designed to encourage the production, conserve the supply and control the distribution of food products and fuel. I do not intend to read all of this long statute; I do want to read an extract from the first section thereof:

> Be it enacted, etc., That by reason of the existence of a state of war, it is essential to the National security and defence, for the successful prosecution of the war, and for the support and maintenance of the army and navy, to assure an adequate supply and equitable distribution, and to facilitate the movement, of foods, feeds, fuel, including fuel-oil and natural gas, and fertilizer and fertilizer ingredients, tools, utensils, implements, machinery, and equipment required for the actual production of foods, feeds, and fuel, hereafter in this act called necessary; to prevent, locally or generally, scarcity, monopolization, hoarding, injurious speculation, manipulations, and private controls, affecting such supply, distribution, and movement; and to establish and maintain governmental control of such necessaries during the war.

The act then goes on in great detail, providing among other things that the President shall have power from time to time to purchase and store certain food-stuffs and sell them at reasonable rates. It

provides for the condemnation of hoarded food-stuffs; it provides for the restraint of monopolization; giving, in other words, very ample power to the President to act for the securing of greater equality of prices and for the more equitable distribution over the country of the necessities of life.

I mention these acts to show that this subject already is engrossing the attention of Legislatures, and that this Constitutional Convention well might take into consideration the expediency of vesting the Legislature with some power to act along these lines along which Congress already has acted and along which the State already has acted.

The article of amendment under consideration received from the committee careful consideration. There was considerable discussion among us as to the proper scope of the resolution. From the tenor of the amendments which have been proposed it would seem that there is some recognition of the advisability of such an amendment, at least so far as it relates to food-stuffs, feeds and fuel.

Some difference of opinion has been expressed as to whether the resolution is not too broad in going on and extending to other necessaries of life. The committee had before it a number of propositions which in effect would allow a city or town to deal in anything it saw fit. The committee thought it was advisable, at present at least, to go no further than there was some prospect of the Legislature acting, and therefore limited it to the necessaries of life. The main legislation at present goes, and perhaps for a good while to come probably will go, no further than the subjects of food and fuel. The necessity of similar legislation in the case of clothing and such necessaries of life at present is a somewhat remote contingency. No such emergency has existed in those lines as has existed in the subjects of food and fuel. Therefore for that reason perhaps little harm would be done in cutting off the other necessaries of life. At the same time, I do not think any harm would be done by leaving them there. The Legislature never is disposed to take extremely radical action except in view of a clear emergency. The Legislature has had power for some years to take land to provide homes for citizens. That power was given by vote of the people, and it has stayed on the statute-books for these several years and no money has been appropriated to carry out that power. There is no more danger now than there was before the passage of that act that the Commonwealth would go into the real estate business. There is the power there; they could use it if an emergency arose. If the emergency was sufficiently great they probably would use it. And yet there has been no tendency on the part of the Legislature to go to the limit of the power provided for them by law. Similarly with regard to this power. The probability of hasty action by the Legislature, the probability of hasty action by cities or towns in this respect, the likelihood of the Commonwealth or of the cities and towns going rashly into the business of dealing with the necessities of life, is very small indeed. The little corner grocer, the dealer in the necessities of life, exists in every Representative district, every Senatorial district and every ward of every city and town. The Legislature or a city or town could not take over that business without affecting a large number of its citizens, and no one ever can cry out so loud as the man who is hurt. So long as your cities and towns and so long as

your State are governed by men elected by popular vote they are bound to pay close attention to the rights of persons who consider that their rights are being invaded. I do not think there is any danger of the Legislature or any city or town acting rashly in this respect. We already have had experience in the General Court with relation to State insurance. A proposition was put before the Legislature which in effect would have established an insurance monopoly, and with noteworthy *esprit de corps* the insurance agents of the State, although this affected only compensation insurance and not the broad general subject, rose in a body and fell upon the Legislature. For days and days they crowded the largest hearing-room in this State House, and voiced their opposition with noteworthy vigor. The result was that the measure died, and it may be assumed fairly that wherever a large number of people are involved, the chances of the Legislature taking such action as will put them out of business is very small indeed. And the same thing applies to every city and town in this Commonwealth. On the other hand, this power may be of considerable value. The present methods of distribution of food and fuel, to go no further than that, are entirely adequate for all ordinary situations. In conditions such as we now have they are exposed to two dangers. The first is that by combinations and by manipulations such as the gentleman from Newton described yesterday in the case of the coal business, an unreasonable toll or profit may be taken upon the product in its transition from the producer to the consumer, and that is a thing that the Commonwealth can and should guard against as far as it may. In the second place, the facilities may not be adequate for providing a sufficient supply. That is more important to us than to almost any other section of the Commonwealth, because the greater part of our food comes from outside the Commonwealth.

There has been one circumstance in the near past that threatened to shut us off from our food supply, — the threatened railroad strike. When that was upon our heads it seemed there was a perfect panic among the householders to secure an adequate supply of food, so that they should have sufficient to tide them over the emergency. If that strike had gone on we probably should have had to face a serious food shortage. Similarly in the present situation, when railroad facilities are overtaxed, we may at any time be brought face to face with a situation which will prevent us from obtaining our normal supply of food and reduce our stocks to the danger point. It is to meet situations like those that this act might be of great benefit. It could very well happen within the near future that the Legislature will be called upon to consider the advisability of the State establishing a reserve stock of food to protect the Commonwealth from starvation in case of an emergency of that sort. That is a proposition that every State has to face at some time or other, — the provision of a suitable supply of food.

Mr. MONTAGUE of Boston: I desire to ask the gentleman from Worcester why the very first language of this resolution was changed from the way it read yesterday to the way it reads to-day.

Mr. HOBBS: As I take it, by that he means the change in the amendment moved by Mr. Anderson of Brookline.

Mr. MONTAGUE: Yes.

Mr. HOBBS: I think that perhaps the gentleman from Brookline is

quite as able to answer that question as I am myself, and as the gentleman is sitting next to him I would suggest that he ascertain from him. I will answer the question later on if he does not obtain a satisfactory reply, and if I can.

This situation, the existence of conditions actually here to-day, which may make it necessary for the Commonwealth to take radical steps to protect itself from the immediate danger of starvation, is ample warrant why there should be constitutional power for it to act, and I think is ample warrant for its being given power to act, and not merely when an emergency actually exists, because that merely is giving it power to lock the barn door after the horse is stolen. The power should exist not only in times of war and of general distress, but in times of peace as well, because it is then that your reserve stock can be laid in, and not when the emergency is upon you and prices are high and food is hard to get at any price. If you limit it to the case of actual emergencies you are compelling the Commonwealth to work under great restrictions.

I think that those considerations afford the general basis of the reason why some action should be taken by this Convention. I do not think that the committee had any particular desire to eliminate a system of private profit. I do not think that the question of whether private dealing in the necessities of life is not after all a crime was particularly presented to our minds. But I do think that we felt that power should be given to governmental agencies whereby they could act in case of emergency if there was prospect that their action might result in any good to the Commonwealth. Now, it might result in good in this way. Of course the Commonwealth is not well fitted, nor is any city or town, to engage in a mercantile business. Their entire organization is unsuited to that purpose. The only advantage which the State has over a private individual is due to its character as a sovereign State, to its ample powers to take by eminent domain, and to its credit, whereby it can purchase in larger quantities than the individual can and store in larger quantities than business considerations would warrant an individual in doing. In those respects it has a real advantage over an individual or over an ordinary combination of individuals, and might act with great benefit to its inhabitants and perhaps relieve the emergencies under which they are struggling at present.

Mr. Cusick of Boston: I should like to ask the gentleman if there is anything in the resolution he is discussing that warrants any question or consideration of the conservation of food.

Mr. Hobbs: I do not understand the purpose of that question.

Mr. Cusick: The purpose of that question is that I note the gentleman's argument, going back to antiquity, was based on the fact that food products were becoming so scarce that it was necessary that the State should in some way enter into control of such products. Now I am asking him whether or not in the resolution which he has discussed there is a single word relating to the conservation of food or food products.

Mr. Hobbs: The resolution I am reading, the original resolution?

Mr. Cusick: Well, either of them.

Mr. Hobbs: "The General Court may authorize the Commonwealth to take by purchase or otherwise food-stuffs, fuel, ice, and

other necessaries of life." That authorizes it to take. The provision that the General Court may authorize the establishment of elevators, warehouses, canneries, slaughter-houses and other like means of producing, selling, distributing the necessaries of life, certainly contemplates methods of storing, conserving and preserving food products. I do not see any other interpretation that can be placed upon those words.

Mr. CUSICK: The resolution contemplates the treatment of food products after the food products have been produced. Is there anything at all in the resolution which would enable us to increase the production of food products? That is what I consider the greatest conservation of food or food products.

Mr. HOBBS: The committee were more concerned with the mercantile aspect of the question than with the agricultural aspect. No. 321, defining private property title to natural resources, was reported by our committee, and states that the conservation, development and use of agricultural, mineral, forest and water resources of the Commonwealth is a matter of public interest, and, therefore, that the General Court may authorize the taking by purchase or otherwise, and may enact such legislation as may be necessary or expedient for securing and promoting the proper conservation, development and use thereof.

Mr. CUSICK: The gentleman says that the committee was most concerned about the mercantile aspect of this matter. Do I understand by that that the resolution simply contemplates the fixing of prices to the consumer at the expense of the general taxpayer?

Mr. HOBBS: I do not quite understand now the purposes of this interrogatory, nor am I entirely certain that I can answer that question. I use the word "mercantile." I do not understand that the subject of price fixing is explicitly treated in this resolution. There are a number of things that the committee could have included in this resolution. The committee endeavored to make it as simple as possible. The gentleman understands, I think, with regard to all the staple necessaries of life, that they are produced outside the Commonwealth, and that the effect that the Commonwealth can make upon their prices is very small indeed. How can the Commonwealth regulate the price of wheat? How can the Commonwealth regulate the price of meat? Not one-tenth of what the Commonwealth uses comes from inside of the Commonwealth. Certainly it cannot regulate the price. I do not think that the subject of price fixing is a matter that concerns this body so much as it does Congress. Congress has made some endeavor to deal with that subject in the act from which I quoted. The act provides for the conservation of food products and fuel. Now, Mr. President, this amendment I think contains a germ of good. Some claim that it does not go far enough. Others claim it goes too far. As between the two the Convention must be the final judge.

I want to refer briefly to some of the amendments that have been offered to this measure.

The first amendment, offered by the gentleman from Boston (Mr. Balch) and printed in the calendar, attempts to interject the words "in time of war or general distress," and fixes a time limit for the exercise of authority. I must respectfully voice my opposition to the placing of a narrow time limit or to a narrow restriction of the power given. As I have said the time for using this power cannot properly be con-

fined to the actual emergency. If the Commonwealth goes into this business in any considerable degree, it must find itself frequently with a supply on its hands which at the end of the emergency, if it has got to go out of business at that time, it will have to dispose of at a considerable loss. That it seems to me is an unfair and unnecessary handicap to place upon the Commonwealth, which already is sufficiently handicapped in the matter of engaging in what is essentially a private business.

As to the amendment offered by the gentleman from Lexington, that has reference to whether this should extend to other necessaries of life besides food and fuel, and as to that I do not think it would do any harm if put in, because as yet there has been no such emergency in matters of clothing, which I take it is the other main necessary of life, as would seem to call for legislation. At the same time, it is only fair to state that as far as woolen clothing goes a number of our manufacturers have had to go to England and make terms with the government of England in order to get enough wool to keep the factories running, and the situation of an emergency in clothes is not perhaps so remote as we might consider.

As to the amendment offered by the gentleman from Arlington, I think that is taken care of by the redraft moved by the gentleman from Brookline. The amendment moved by the gentleman from Boston, Mr. Bigney, is one of not much consequence. I do not think that the amendment would do any harm if inserted, nor do I think that it adds anything appreciably to the proposition.

The amendment moved by the gentleman from Quincy goes so much beyond anything that the committee had any idea of, and is so entirely outside the scope of what we had conceived, that it seems to me that it is going a little further than the committee desired. It is a pretty broad proposition to authorize the General Court to go into any business that it sees fit. As for those who claim that the resolution is altogether too broad, this amendment without further argument will be very much too broad.

As to the amendment moved by the gentleman from Haverhill, I presume this proceeds upon the assumption that spirits or intoxicating liquors are either foods or necessaries. That aspect of the situation had not struck the committee. I do not think that the committee had any desire to authorize the Commonwealth, or the cities and towns thereof, to go into the liquor business. I cannot regard the amendment as at all necessary. I think that it will do no serious harm to the Commonwealth if inserted.

Mr. GEORGE of Haverhill: I should like to ask who is going to decide what the necessaries are. I remember very well when I was somewhat younger than I am now attending school up in the upper part of Rockingham County, New Hampshire. We had a very good citizen, one whose lungs were so affected the doctor said he could not live for a great length of time. He was a farmer. From the time when he was twenty-five years of age until he was eighty-two he drank a glass of rye whiskey at ten o'clock every forenoon and at three o'clock every afternoon, and by being moderately occupied on his farm he lived to be eighty-two years old. In that case he thought, and the physicians thought, it was a necessity. Now, I should like to ask the gentleman from Worcester who is going to decide what the necessities are.

Mr. HOBBS: I cannot decide that question. I do not regard intoxicating liquor as a necessity myself.

As to the amendment moved by the gentleman from Brookline, I think that has been sufficiently explained by him.

As to the amendment moved by the gentleman from Boston in the first division, if the words —

Mr. MONTAGUE of Boston: I do not understand that the gentleman from Brookline in speaking of his amendment explained the change of the very first word. I should be very glad to have the gentleman from Worcester explain.

Mr. HOBBS: May I ask what word he means? The original draft reads that the "General Court" may authorize the Commonwealth, and the other reads that the "Commonwealth" may by statute duly enacted authorize. Is that what he has reference to? I presume that the gentleman from Brookline had an idea that perhaps the initiative and referendum might be adopted by this body, and therefore the restriction of the power to the General Court was not advisable. I am not sure that the language used in the original draft would have that effect.

Mr. MONTAGUE: I understood the gentleman from Brookline to say that his amendment was a committee amendment, and therefore I asked the question.

Mr. HOBBS: I did not so understand the gentleman from Brookline. I think that the gentleman from Brookline may have consulted with the committee informally as to some changes made. The number of changes made is very small indeed, and I do not consider that any of them touch the substance of the matter.

Now as to the amendment offered by the gentleman from Boston, Mr. Edwin U. Curtis. As I take it, the provision that sales be made at cost has been stricken out, and also the last clause. If I followed correctly the amendments of the gentleman from Boston who has just been interrogating me I think that was the effect of the amendments, — to strike out the words "at cost," and to strike out the last clause.

Mr. EDWIN U. CURTIS of Boston: I should like to correct the gentleman. It would strike out in the fourth line from the last: "If a public exigency arises."

Mr. HOBBS: The words: "when and so far as in its judgment a public exigency exists therefor"; is that what is stricken out?

Mr. EDWIN U. CURTIS: "If a public exigency arises." In answer to the gentleman, the words stricken out were as follows: "If a public exigency arises."

Mr. HOBBS: The objection I have to the amendment is of an entirely different nature. I did intend to object to the presence of the words "at cost," because that would impose a sensible handicap on the Commonwealth in getting rid of stocks that it had acquired in contemplation of an emergency, and the market price of which had suddenly fallen, so that they could not be sold at all. The objection that I have to the amendment is that it makes the Commonwealth the sole possible agency in the matter of purchase. While that might be desirable, it seems to me the Commonwealth should have a free hand to authorize the city or town to make purchases for itself if it sees fit. It seems to me that it is unnecessary to have all these transactions pass through the State.

Mr. Butler of Brockton: As a member of the committee on Public Affairs, and as a member who is interested in this measure, I should like to say a few words to you. I want to confine my remarks to the words "slaughter-houses and canneries," and I want to try to prove to you that they will be of advantage to our municipalities, and that they will encourage and increase the production of food. In the first place, I want to take my own city for an example. In my own city we raise every year at our own city farm between 800 and 1,000 hogs. Those are sold in the open market. If the city of Brockton had the right to establish a slaughter-house those hogs could be killed and sold to the inhabitants, which would be of advantage to them. This year the alderman from one of the wards of our city introduced a bill asking that the city hogs be killed, sold and distributed among the people of Brockton. Our city solicitor ruled that it would be unconstitutional. This resolution will give us a constitutional right. Now as far as the canneries are concerned. In the city of Brockton to-day the Plymouth County Farm Bureau is operating a little cannery for domestic purposes, and it is crowded with work. There is more canned goods being put up there than ever before. I hope to see a slaughter-house at our city farm, and a cannery under the same roof, so that the people in that section will be encouraged to raise their stock, so that it can be canned at a small cost, and in that way I believe it will encourage the production of food products. I believe in this resolution, for the reason that our esteemed ex-Governor (Mr. Brackett) in this division was so earnest when he brought the measure before the attention of the committee. He assured the committee that there was a demand for something in this line, and I hope you, gentlemen of this committee, will give it the fullest thought and not put on amendments enough so that it will work to the disadvantage of the people. As far as the milk products are concerned, I believe that that is one great problem, and I think in a few years you will see the milk products of Massachusetts controlled by one concern. If that ever should come, I believe the municipality should have the right either to take over that plant or establish one in competition to it. I think that this year has proved to the people of this Commonwealth that the advice of our President, Mr. Wilson, has been fully carried out, for at no time in the history of this State has there been so much product, — so many vegetables, so many farm gardens, so many fruit gardens and so many spare acres planted, — as there have been this year, and I assure you that one thing that we must consider is the production of food. I was in hopes that the land resolution would precede this one, but when it does come I am going to try to explain to you that Massachusetts should be one of the producing States rather than a State that produces only sixteen per cent of what we to-day use.

Mr. Balch of Boston: I rise to speak to the amendment offered by me and printed on the first page of the calendar for the day. The prime purpose of this amendment of course is to raise, in as plain and simple a way as possible, and as little complicated with secondary questions, the question whether this amendment, if adopted at all, should be for general use or limited to emergency use. At the same time, in drafting this amendment I endeavored to cover another minor point which had been raised originally by Mr. Parker of Lancaster with regard to the possible interpretation of the committee's resolution

as extending the power to take under the police power. I notice from the other amendments printed that there seems to be something approaching unanimity in favor of meeting the doubts raised by the gentleman from Lancaster, for there was Mr. Curtis's amendment and an amendment which I think was offered by Mr. Pillsbury, and several others, — I believe one offered by Mr. Brackett, — to cover this same point in varying form. I do not need to say that it is absolutely immaterial to me which amendment, or in what form, is finally adopted to cover that point. I do think that the mere fact that an ex-Attorney General of this Commonwealth and an ex-Governor of this Commonwealth have felt or suggested the doubt, is enough in itself to show that the doubt does exist, and every one has admitted that if a doubt exists it should be removed. Therefore it appears to me that it does not need argument that the point should be covered by the adoption of some amendment on it. As to the form of my own amendment on it, it is long, but perfectly unmistakable. That is the only merit I claim for it.

Now, Mr. Chairman, I come to the prime purpose of my amendment, namely, the raising of the question whether this great power we propose to confer should be for general use or limited to emergencies. And before taking up that broad question let us first think of one or two points of procedure. Assume for the moment, for the purpose of argument, that the Convention, backed up by vote of the people, should conclude that this was to be merely an emergency measure. Just how would it work out? Who is to decide about the emergency? I say the Legislature. It is perfectly true that such a power easily could be abused. My amendment uses the words "in time of general distress." What is a time of general distress? Mr. Harriman in his very eloquent speech yesterday would have us believe that all times are times of general distress. I do not traverse his statement at this moment, though I hope to deal with it a little later. I admit it would be open to the Legislature to find that each and every year was a time of general distress. They could do so. But, Mr. Chairman, I have put in a proviso for the express purpose of making it sure that that question will be reconsidered each year that the Legislature sits. I am perfectly ready for my part to trust a Legislature with the decision as to when an emergency exists, if it can be induced to consider it at all. I am not ready to trust that, if a system were once put in operation, mere inertia, mere pressure of other business, would not prevent its being reconsidered, so that the thing simply would drag along and go on and on, because it was nobody's business in particular to stop it, and because the Legislature each year simply lost sight of it in the pressure of other business. That is the purpose of that clause in the amendment which I have offered, calling on the General Court to reconsider the question each year.

Mr. HARRIMAN of New Bedford: I should like to ask the gentleman speaking, if, for instance, an ice plant should be established in the city of New Bedford, he would think that it ever would be established if it depended upon the Legislature to say whether, after it had been established, it would continue for more than one year.

Mr. BALCH: May I deal with that a little bit later and a little bit indirectly, instead of trying to answer it specifically?

It has been suggested to me that this provision from year to year

assumes annual sessions of the Legislature. That undoubtedly is so. It also has been suggested with considerable force that one year is too short a period anyway, because of the difficulty of starting and stopping a great enterprise like this. For that reason, sir, I should like to amend my own amendment by correcting it, by making it read: "Such authorization shall be for not more than two years at a time, but may be repeated from time to time." I am obliged to confess that I am so ignorant of parliamentary procedure that I do not know how that should be drawn, whether I ought to offer in writing an amendment to my own amendment to do that, or whether unanimous consent can be given me now to do it. May I inquire of you, Mr. President, whether I may amend my own amendment on the spot by unanimous consent in that merely perfecting detail?

The PRESIDENT: As the Chair understands the question of the member, there is no objection to his offering any amendment and it will be entertained providing objection is not made by any member of the Convention.

No objection was made to the change in the amendment.

Mr. BALCH: The amendment was intended to meet the objection that one year was too short a time for starting and stopping so great a piece of machinery, also to meet the objection that the one year period provided by me assumed annual sessions of the Legislature, while we might have biennial sessions. Therefore I wish to make the following change. I wish to have it read that "Such authorization shall be for not more than two years at a time, but may be repeated from time to time," etc.

I wish to touch one more point while we are on the matter of procedure. In case the Convention shall think that the measure should be an emergency measure the question remains who shall judge whether or not the emergency conditions exist. A question was made about that. It was suggested that there would have to be endless litigation before the Legislature could act effectively, even though the intention was to make the Legislature the judge. I have attempted to dispose of that difficulty by explicitly making the Legislature the sole judge in such a way that there could be no doubt whatever. I am perfectly willing to do that. I believe the Legislature should be the sole judge. It has been suggested in reply to that, that the Federal Constitution may raise legal questions, and that therefore my attempt to avoid litigation is worthless; but, Mr. Chairman, if that is so, absolutely nothing can be done about it anyway by anything we do. No action that this Convention of the people of Massachusetts takes can alter by one jot the right of any parties under the Federal Constitution. Therefore it is idle to talk about possibilities of litigation and delay founded on the Federal Constitution. Let us do what we can to remove the possibilities of such litigation under the Massachusetts Constitution. I believe that my amendment, like some of the others that have been offered, meets that point fully and fairly.

Mr. Chairman, this brings me to the merits.

Mr. BOUCHER of New Bedford: The gentleman says in his amendment here that the General Court shall be the sole judge of the conditions. Let us assume that the Legislature is not in session; who would be the judge then?

Mr. Balch: I understand that the thing would go on automatically until there was a Legislature in session. I know of no one else who would be the judge, and I presume it would run on until somebody stopped it. That is the usual method.

Now, Mr. Chairman, in the very few minutes that remain I shall offer a few thoughts, and only a few, on the very large question raised by the whole subject-matter here. We already have had a very wide-ranging debate, and in parts a very deep-searching debate. Of course we all understand the situation here. We all know that on the one hand in time of famine, in time of war, in time of pestilence or plague, in time perhaps of great general strikes, in time of failure of harvest, a power like this residing somewhere is an emergency power. We also know, gentlemen, that this measure opens the door wide, — not only opens it wide but invites an entrance through it, — to enter the realm of the most complete State socialism on the German model. Some of us frankly and in the most manly way came before this Convention and stated that that was just what they wanted; others of us do not want it. I am one of those who are not afraid of the name socialism. It is not a bugaboo to me. It was most truly said, by Mr. Powers I think, that all States are now socialistic to a certain extent; it has become a question of degree only. But, sir, you have nowhere in the world, so far as I am aware, so complete and thorough-going a system of absolute paternalism and absolute State bureaucratic socialism as you would get if this amendment and the invitation therein contained were both adopted and accepted.

I wonder just how many of us have thought of the way this really would work out in practice. It has been pointed out that, to a considerable extent, it means the annihilation of the smaller dealer, the small middleman. I for one shall not shed too many tears over the small dealer, the small middleman. We are not hesitating to conscript the lives of our young men and the fortunes of our wealthy men. I am ready to conscript the livelihoods of our small middlemen. But there is a class of men who will be more affected by this and of whom very little has been said, and that is the small producers. How many of us realize that after this thing has been in operation a little while the small producer, the man who keeps hens and sells eggs, the man who raises a few cabbages, will have just one person he can sell to, and nobody else? That is the public market that has been set up; because, with the other middlemen, the other dealers, the other purchasers wiped out, he will sell to the State or he will sell to nobody, and he will sell to the State at precisely what price the State sees fit to offer him. If the city of Boston should go into the market business and wipe out the other marketmen and dealers, and the Arlington produce gardeners should bring their product to town to sell to the city at such prices as the city chose to offer them, and none other, I wonder what the city authorities of Boston, looking solely to the Boston vote to elect them, would be willing to pay to the Arlington market-gardeners for their products. I do not think that they would pay them much!

Mr. Brown of Brockton: Does the gentleman assume that so wise a power as a municipality or a State would not know that from the economic standpoint, the producer must be rewarded, otherwise he would not produce? Would it be economically sound for the city of Boston to press that producer to a point where he lost money?

Mr. Balch: It would not. I will answer the gentleman, sir, that it would be economically unsound, but that I utterly lack faith in the wisdom of the city of Boston or any other portion of the Commonwealth to act promptly and fully up to the theoretical, economically sound doctrine. They have not done it in the past, and I see no reason to think that they will do it in the future until they have learned by hard experience, and that will take a generation perhaps.

Mr. Anderson of Brookline: I have called a meeting of the committee to be held at 9.30 o'clock on Wednesday morning next. The hour set for voting on this is 3.30 in the afternoon. I respectfully ask that the members will give publicity to that fact, as there are very few members present; and that the clerk will ask the members of the committee also to be present. If there are any other amendments or any written communications, — we could not of course open it for a public hearing, — which are desired to be presented, the committee at that time would like them. I hope such amendments and communications may be in the hands of Mr. Hobbs, clerk of the committee, or of myself, seasonably. We shall endeavor then to have the mind of the committee, or at any rate of as many as we can get together, so that we can state to the Convention on Wednesday, before the close of the debate, what the matured judgment of the committee is, — instead of leaving it to the somewhat unsatisfactory method of the chairman's guessing.

The debate was continued Wednesday, September 26.

Mr. Anderson of Brookline: It may facilitate the discussion of the day if I take this opportunity to say to the Convention that we had a meeting of the committee this morning, at any rate, six or seven of them, perhaps not technically a quorum, to consider the matters raised by the various proposals of amendment and any possible change in our own views; that the result of that meeting was that in lieu of the amendment moved by me, on page 3, the committee, — meaning by "committee" the meeting to which I have referred, — will ask to substitute the following. If the Convention will give attention I will read and explain the changes. I have had typewritten a considerable number of them, and will get as many more as I can, so that members who desire to give critical attention will have the best possible available facilities therefor.

The proposed substitute amendment reads the same as my amendment on page 3 down to the word "therein."

The Commonwealth may by statute duly enacted authorize the taking by purchase or otherwise of food-stuffs, feeds, fuel, ice and other necessaries of life, paying reasonable compensation therefor, and the sale of the same to the inhabitants thereof and to any county, city, town or other municipal corporation therein.

I said it read just the same. In reading that over I was of the opinion that after "thereof," "or" should be changed to "and." There is no other change. Then there follows after the semicolon an insertion made in deference to the amendment suggested by Mr. Quincy of Boston, and printed on page 2 of the calendar of to-day, and also embodying some of the ideas contained in the amendment moved by Mr. Williams of Brookline and printed on page 3 of the calendar. Insert after "therein" the following:

The Governor, with the approval of the Council, if he deems that a public exigency exists, may, until otherwise provided by law, exercise the powers hereby granted.

That is, as the Convention will observe, a pure emergency power, to be exercised by the Governor and Council only until it is provided otherwise by law. Then starts a new sentence:

The Commonwealth may by statute duly enacted authorize municipalities to buy and to sell to their inhabitants the necessaries of life and to harvest and to manufacture ice;

No change in substance.

and may also in like manner authorize the establishment, maintenance and operation by the Commonwealth and by cities and towns of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses and other like means for —

Substitute for "producing," etc., the words

collecting, converting, selling and distributing the necessaries of life.

In deference to the suggestions made in part in debate last week, and also in response to a suggestion which came to me at the week-end from the chairman of the committee on Form and Phraseology, the delegate from Beverly (Mr. Loring), the committee has decided to substitute for the word "producing," which seemed to some members of the Convention too broad and perhaps carrying us too far into what sometimes is called State socialism, the words "collecting and converting;" so that, for instance, there could be no doubt of the Legislature having power to provide a milk distribution station in Boston, at which station it would be entitled possibly to make the excess milk into butter and cheese, and otherwise dispose of it; also to provide for the ordinary processes in canneries, and the manufacturing which is incident to a slaughter-house, but eliminating from the contemplation of this resolution general production and manufacturing. The rest of the change, the Convention will observe, is necessary to provide that legislation duly enacted, whether it comes by the I. and R. or comes by the Legislature, shall be competent to exercise these powers.

I think I have stated now the view of the committee. I might properly add that I understand that the amendment which we have put in covers the desires of Mr. Quincy, for he was good enough to come before the committee, and will eliminate to that extent, so far as he is concerned, the discussion of his amendment.

Mr. NEWTON of Everett: Will the gentleman kindly read now the amendment as a whole, as he submits it for his committee?

Mr. ANDERSON: There are half a dozen more copies here; any member who wants to follow the matter critically may have those copies, and we will have as many more as possible and as soon as possible.

Now, Mr. President, I comply with the request of the delegate.

The Commonwealth may by statute duly enacted authorize the taking by purchase or otherwise of food-stuffs, feeds, —

"Feeds" was inserted in deference to a suggestion which came to us.

fuel, ice and other necessaries of life, paying reasonable compensation therefor —

Inserted in deference to the amendment proposed by the delegate from Arlington (Mr. Brackett).

and the sale of the same to the inhabitants thereof and

Instead of "or" —

to any county, city, town or other municipal corporation therein; the Governor, with the approval of the Council, if he deems that a public exigency exists, may, until otherwise provided by law, exercise the powers hereby granted. The Commonwealth may, by statute duly enacted, authorize municipalities to buy and to sell to their inhabitants the necessaries of life and to harvest and to manufacture ice; and may also in like manner authorize the establishment, maintenance and operation by the Commonwealth and by cities and towns of markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses, and other like means for collecting, converting, selling and distributing the necessaries of life.

Mr. BOUCHER of New Bedford: May I ask the gentleman a question? I see here it says: "authorize municipalities to buy and to sell to their inhabitants." Should you also say "at cost, — to buy and to sell to their inhabitants at cost?"

Mr. ANDERSON: I do not think I get the question.

Mr. BOUCHER: It says: "The Commonwealth may by statute duly enacted authorize municipalities to buy and to sell to their inhabitants." Would it be right if you include there "at cost" in that amendment?

Mr. ANDERSON: We had some discussion of that the other day, and I think that the judgment of the committee was that a limitation of that kind in a constitutional grant was unwise. It hardly is to be contemplated that the Legislature would put itself or its municipalities into business for the purpose of making any exorbitant profit, and it also is not to be contemplated that if the Commonwealth, either by itself or by a subdivision thereof, goes into business for an emergency, it may not be constrained as a business matter at some time to sell at less than cost. It seemed therefore to those of us who studied it critically that it was not desirable in the Constitution to say anything about cost.

Mr. Anderson withdrew the pending amendment previously moved by him and offered a new draft cited at the beginning of the chapter.

Mr. Pillsbury withdrew the pending amendment previously moved by him and offered a new draft cited at the beginning of the chapter. He also moved certain amendments of the amendments offered by Messrs. Anderson of Brookline and Edwin U. Curtis of Boston, also cited at the beginning of the chapter.

Mr. PILLSBURY of Wellesley: I sincerely hope that the Convention will not be betrayed into the adoption of the resolution submitted by the committee, or anything like it. It is undoubtedly the broadest, most radical, most far-reaching scheme of State socialism which has ever been submitted to any body possessing public powers in this Commonwealth, and if adopted it will go far toward committing the State to trade in all the necessaries of life. There is nothing in the existing emergency, or in any emergency which is in sight or likely to be, to call for or justify so radical a scheme as this.

At the same time I recognize, though with great regret, that under the somewhat hysterical conditions which unfortunately accompany the sessions of this Convention, something of this kind is likely to be adopted. The problem is to keep it within reasonable limits, so that we may not do more harm than good. In other words, it should be kept within the limits of an emergency measure and not be made a permanent committal of the State to trade in the necessaries of life. That is the distinction to which I call attention, and the distinction

which I have marked and effected in the amendments which I have offered.

There are two fundamental and radical, and to my mind conclusive, objections to the committee's resolution in its present form. One is that it extends to all the necessaries of life. There is no occasion and no justification for going that length. If we confine ourselves to food and food-stuffs, and feeds which I have now inserted in my amendment in deference to the same reasons that led the committee to insert it in theirs, and fuel, in connection with ice, which belongs here only because under certain conditions it is a necessary preservative of food, we shall go as far as the State can possibly hope to go with any advantage to the public. The other fundamental objection to the committee's resolution in its present form, which also I have eliminated from my amendment, is that by providing for the establishment of plants for this business, not only by the Commonwealth but by cities and towns, we have gone far to permanently commit the State to trade in, and practically the production of, all the necessaries of life. That is entirely unnecessary to the measure as an emergency measure, for the reason brought out in my amendment, that if the emergency arises and it becomes necessary to exercise the power, or any part of it, the Commonwealth can take the use of any buildings, structures, machinery or premises which are necessary to the effective exercise of the power, and so does not need to establish and permanently maintain them at the public cost.

The difference between those two things, Mr. President, is most important. If you go the length of the committee's resolution you have permanently committed the State and the cities and towns to trade in all the necessaries of life. For any emergency purpose that is entirely unnecessary, as we can equip ourselves for the emergency without going to that length, and then when the emergency is over we are free of the equipment.

I wish to call to the attention of the Convention what I believe to be the only advantage to be secured by this scheme in any form whatever, either as an emergency measure or a permanent engagement in trade in the necessaries of life, or first, to what cannot be secured by it. If any member of this Convention expects that any reduction of prices of food or fuel or any other article in which the State undertakes to deal is to be secured by engaging the State in trade in that article, he is bound to be disappointed. There is no such thing for the public in this scheme. The State in trade is a demonstrated failure, always has been, undoubtedly always will be. There is not a member of this Convention but knows as well as I do that the government, State or Federal, cannot carry out the business part of its own legitimate governmental functions except at the wildest waste and extravagance. It is hardly too much to say, as somebody said here the other day, that the government pays 100 per cent more than anybody else for anything it has occasion to use. It pays the highest prices for labor, it pays the highest prices for materials, and always uses both to the least advantage. It cannot need demonstration that nothing is to be saved in prices by engaging the State in trade. It will operate to enhance prices, and whatever we get through the intervention of the State we shall get at an enhanced price. Every consumer will have to pay the enhanced price for every pound of product, whatever it is,

or if he does not the taxpayer will have to pay it, for it will fall to him unless it is put upon the product, and if put upon the product it will fall upon the consumer.

There is just one thing which in my opinion we may hope from an emergency measure of this character, — one thing and no more. It is possible to conceive that in some emergency, — though I do not anticipate any such thing, — it is possible to conceive that in some emergency, by the intervention of the State's power of eminent domain, we may be able to get food or fuel at some price which otherwise we could not get at all. It will be at an enhanced price, but rather than not have it we should submit to the enhanced price. There is that possible measure of public benefit in this scheme, and no more. The truth of that proposition is demonstrated by all the experience of the exercise of governmental functions in business enterprises. On the other hand, the adoption of the comprehensive scheme submitted by the committee will instantly cast a shadow and a hazard over all private trade in the necessaries of life, and that additional hazard will have to be paid for, whether the State does or does not engage in business. It will have to be paid for from the time when we have advertised that the State is liable to go into this business, and every pound of the product which we buy from the private dealers we shall buy at an enhanced price in view of the fact that we have made that proclamation.

Furthermore, if the State does avail of this power which the committee's resolution proposes to confer, and goes into the business of producing and collecting and converting or supplying the necessaries of life, the inevitable tendency will be to force private enterprise out of the business, and to force the State into it, until the State becomes the only dealer; for private enterprise, as every man in this Convention knows, cannot compete with the government, having the public treasury and the power of taxation behind it.

I shall not enlarge upon these propositions, Mr. President. They are fundamental and need no further demonstration than our own observation already affords.

Now let me say a word in explanation of my amendments. I have proposed a substitute for the committee's resolution, which keeps all features of it that are desirable or permissible in my view of the matter, — and which differs, I will say by way of explanation, from the committee's resolution only in two important particulars. I have incorporated everything else. One difference is that instead of extending to all necessaries of life it is confined to food or food-stuffs, feeds, fuel and ice. The other is that it eliminates the plant-establishing feature of the last clause of the committee's resolution, which is by far the most pernicious feature, because if that power is conferred and is exercised, the State and cities and towns are permanently committed to trade in the necessaries of life. The power, for all reasons, should be kept to an emergency power, and exercised, if at all, only as an emergency power.

I need say nothing more in explanation of the amendment which I have proposed to the amendment offered by the gentleman from Boston at my left (Mr. Edwin U. Curtis), except that I have eliminated from it the plant-purchasing feature which is incorporated in his amendment, and substituted for it a power in the State to take the

use of, and occupy, any building, machinery or structure which may be necessary to the effective exercise of the emergency power of the State to deal in these articles so long as the emergency exists.

Now, Mr. President, if I need to say anything further by way of explanation I shall be glad to do so.

Mr. HALL of North Adams: I should like to ask Mr. Pillsbury two questions. First, if he thinks we are through with emergencies that are likely, — I do not say may, — that are likely to arise. If this war continues as long as it already has been going on there are more emergencies ahead of us than food and fuel and ice. When he has answered that question I shall ask him another.

Mr. PILLSBURY: I do not think that emergencies are necessarily limited to war conditions. So far from that, I think that we are in greater danger now, and perhaps permanently, from the operations of what is euphemistically called organized labor than we are from any scarcity of food or fuel or any other necessaries of life occasioned by the war. It is only a year ago that the strike of the railroad trainmen threatened to paralyze the whole transportation system of the country, which meant possible starvation, and that danger is permanent until we find the means of curing it. I trust that my vision extends as far into the future as that of my friend who put the question, but let us not commit Massachusetts to State socialism, until we know that there is occasion for it.

Mr. HALL: Mr. Pillsbury's answer leads me to say that there are other *necessities* of life than food and ice. Fifty years' experience in the public schools has led me to feel, — has led me to *know*, I will change that word, — that there are many children in this Commonwealth, who are obliged to attend school every day, properly clothed and with shoes to wear, and if that is not an emergency in civilized life, what is? So let me ask Mr. Pillsbury this question: Is it not possible, if this war continues year after year, that the emergency of *clothing and shoes* may arise? If so, I will trust the Legislature, because the Legislature represents the people. When an emergency comes I believe in giving the Legislature the power to meet it, just as they have met the other questions. That is all. [Applause.]

Mr. CLAPP of Lexington: As a member of the committee on Public Affairs I may seek an opportunity, before the debate closes, to add a few words to the somewhat extended remarks that I made on the subject the other day. I rise now merely for the sake of asking a question of the delegate from Wellesley (Mr. Pillsbury). He must know from what I said the other day in debate that I am very much in sympathy with the views which he has expressed. All I ask him now is whether the only difference, in substance, between his amendment and that offered by the gentleman on his left, the delegate from Boston (Mr. Edwin U. Curtis), lies in the fact that Mr. Pillsbury's amendment omits the plant feature of the other amendment? Is that the only difference there is?

Mr. PILLSBURY: That is the only change effected by my proposed amendment in the resolution offered by my friend from Boston on the left. I have proposed to strike out from his amendment the plant-establishing feature, and to substitute for it the right to take the temporary use, as I have done also in the resolution proposed by the committee.

Mr. ANDERSON of Brookline: I shall be glad to have the opinion of

the delegate from Wellesley as to whether there is the slightest need of providing any constitutional power on the part of the Commonwealth to take any plant for any public use. If the powers herein, whether limited to emergency or made general, are made for public uses, does it not necessarily follow that the Commonwealth may take either the fee or the use of any plant? If I am right in that point does it not follow that it is unnecessary to lumber up the Constitution either with the language of the amendment of the gentleman from Boston or with his proposed substitute? I am quite in accord with the view that as an emergency matter the power to take either the use or the fee of a plant ought to accrue, but I do not see any necessity of putting it into the Constitution.

Mr. PILLSBURY: I am indebted to my friend for putting the question, because it affords me an opportunity to say what I might and perhaps should have said when I was up before. It is not necessary, in my opinion, to make any change in the Constitution in order to confer upon the Legislature this power to take the use of plants or machinery. I have put that into my amendment only in order that it may not lose any votes from a doubt whether that can be done. I have asked the Convention to strike out from the committee's amendment, and that offered by my friend from Boston on my left, the plant-purchasing and plant-establishing features of the respective amendments. I have given the Convention a clear, definite, certain and better substitute for it, of which the Convention can avail itself if it desires to. I put it there in order that there may be no doubt about it, as I say, and that no member of the Convention need hesitate to vote for my amendment from any doubt whether the Commonwealth, under my amendment, could be properly equipped for emergency business in food or fuel if it has occasion to go into it.

Mr. BALCH of Boston: The zeal and ingenuity of the chairman of the committee having this matter in charge has resulted in our having a new official draft of the amendment before us at each session since we have entertained it for consideration. That fact has tended to make some confusion, which now has reached its peak or maximum by reason of the fact that we have not before us in print the last form of the amendment. We have further confusion by reason of the overlapping of various amendments. It does not appear to me how clarity is to be produced out of this somewhat chaotic condition of affairs, but out of it all comes this fact, at least, that the great issue on this question before the Convention is whether or not we wish to introduce a socialistic system as a permanency, or whether we merely wish it to be used in abnormal times.

The purpose of my amendment, which I admit deserves the condemnation Mr. Anderson has given it for verbosity, was solely to raise that question alone, and with the object of making that absolutely clear I sacrificed brevity. I purposely refrained from suggesting any changes whatever in Mr. Anderson's text. I did not wish to complicate the issue I was trying to raise with any secondary issues whatever. I shall address my remarks, regardless of the form of my amendment or of whatever amendment the point comes up under, to the single question of whether or not we want to go into socialism as a permanent thing, as a normal system for the State, or whether we will keep paternalism for abnormal times.

In the course of my remarks yesterday I pointed out that if the State or any part of it, with unlimited capital and credit, buying at cost or less, and selling at cost or less, with no overhead charges, making no profit, once goes into business, the middleman in that business, — the dealer in that case, — is automatically wiped out. He cannot compete. Every day he keeps his shop open he loses more money. He has got to close up. That means a certain number of suicides, a certain number of broken up homes, a certain amount of suffering. Over that I think we ought not to waste too many tears. If we are conscripting the lives of our young men, the fortunes of our rich men, the health of our civilian workers, we need not hesitate too much in conscripting the livelihoods of certain classes in the community, no matter though that class be personally undeserving of the misfortunes thrust upon it.

But, Mr. Chairman, there is another aspect of it; that is the aspect of the producer. Every man who sells eggs, every man who sells potatoes, every man who sells shoes, every little dealer, — every little producer, I should say; I am not now talking about the dealer, — every little producer of any necessaries of life, after this system has once been introduced a little while, will have just one man he can sell to, one person he can sell to, and that is the public, the Commonwealth, and none other; and he will receive from the Commonwealth, or any portion of it that has gone into his business, just exactly what it chooses to pay him, and not a cent more. I illustrated that by asking what it was likely that the city of Boston would pay the market-gardeners of Arlington for their market truck, if the city wiped out the marketmen, as it would do if it adopted the proposed system, and made itself the sole possible purchaser. I suggested that the officials of the city of Boston, with an eye on Boston votes, trying to please the Boston populace, would pay just as little as they could. Mr. Brown of Brockton suggested that economic law would make it good business for the city to pay to these marketmen a fair price, so as to keep them in business, and keep some stuff coming into market. My reply was that on the basis of hard experience I had very little faith in the ability of the officials of the city of Boston to see that it was better business for them to follow economic laws in every case than it was for them to seek votes in Boston. I would further reply to him now that even if the government of the city of Boston should seek to follow out sound economic law, that economic law would lead them to pay the market-gardeners the least possible price that would keep body and soul together, and that is the way that economic law would work out in practice throughout the Commonwealth. The small producer, under the proposed system, will receive the lowest conceivable price which will keep him in business, excepting so far as that harsh law is modified by what political pull he may have.

Now, Mr. Chairman, it is a big question whether we wish to adopt any such system of German paternalism, made in Germany, as that, as the normal system of life in this Commonwealth. Mr. Harriman, the gentleman from New Bedford, made a perfectly fair and most striking argument in favor of adopting that as the normal system. He says, with perfect frankness, that a time of public exigency exists all the time; that it is normal to have so much suffering that we are justified in adopting paternalism as the normal remedy. He says that

the lower grades of hand-workers receive only from $12 to $15 a week, they cannot raise their families on that, and the Commonwealth must step in and furnish them with food and clothing. My answer to that is that in so far as the fact is true, and unfortunately I believe it to be true to a considerable extent, that is not the way the Commonwealth should help. It should not peddle out charity to them. It should see to it that they receive sufficient from their labor to be able to support themselves and raise families. Mr. Harriman should raise, not the suggestion of importing the German system of State socialism or paternalism, but of seeing to it that our economic structure throughout is such that the lowest paid worker receives sufficient for his labor to support himself in reasonable comfort.

Mr. Brown of Brockton: I should like to hear the gentleman on his theory that the State should see to it that the worker gets a living wage. Just how is the State going to do it? That is what we are after.

Mr. Balch: I think the gentleman knows more than I do about how it should be done. I had supposed that there were means, through the minimum wage commissions, and other means, of working toward that desirable end.

Mr. Brown: I want to say, in all frankness, we do not know how to do it. We do claim that under the Constitution a man has the right to life, and he has the right to happiness, and he has the right to acquire property. He cannot acquire property because other property rights are more powerful. Now, if you can tell us, if you can tell the labor people, how it is possible for the State to act so that a man can get a living wage, you are our Moses to lead us from the wilderness.

Mr. Balch: Unfortunately, I am not Moses, Mr. Chairman. I do, however, still maintain, in spite of not being Moses, that that is the proper aim, the proper end and aim for all, and that the proper way to treat the problem of insufficient wages is not to dole out charity.

Mr. Brown: Permit me just a moment. Would not the State be justified in using power to protect the weak against the extortion of the strong? If it be demonstrated that the strong do have the power to take from the weak, is it the duty of Massachusetts to control the strong?

Mr. Balch: Mr. Brown begs the question, it appears to me, Mr. Chairman, in a most singular manner. He assumes that the farmer is the strong and the textile worker the weak. I am not aware of any such assumption. Why, he wants the State to say: "Here, we will take a dollar out of the farmer's pocket and give it to the textile worker, because the textile worker wants it and the farmer has got it." I see no logic or justice in that whatever.

Mr. Donovan of Springfield: I do not like to have the impression go out that anything that the gentleman from New Bedford (Mr. Harriman) has said, — or any other gentleman in this Convention who is a representative of labor, — I do not want the impression to go out that a labor representative has attempted to take anything away from the farmers and to give it to the textile worker or to any other class of organized or unorganized labor; and the statement of the speaker would give that impression to the Convention.

Mr. BALCH: What I have said would give that impression because that is the absolute fact. That is the way the measure now proposed will work out in practice. The gentleman may not like to have such an impression go out, but that impression will go out to everybody who reads this measure intelligently.

Mr. CARR of Hopkinton: I have listened with a great deal of attention to the debate on this question, and to me it is not a new debate. I have heard it debated in previous Legislatures and to me it is rather refreshing to have this subject listened to with the degree of attention that has been accorded it in this Convention. I can assure the members of this Convention that when this matter ever was attempted to be discussed in the Legislatures of previous years it was the subject of sneers, and it really did me good when I heard the gentleman from Newton (Mr. Powers) go as far as he did in saying that he was an absolute believer in the Commonwealth taking charge of the coal supply.

Now, Mr. President, as I said, it is very refreshing to have attention given to this subject and I am sure the issue is very clearly drawn here in this matter as between the amendment of the gentleman from Brookline (Mr. Anderson) as represented by his committee, and the gentleman from Wellesley (Mr. Pillsbury), because there are two striking differences. Either we are in favor of this proposition that will let the Commonwealth go a step forward, or we are helping to keep the law as it is at the present time, and the Constitution as it is at the present time. I believe that the proposed amendment of the gentleman from Wellesley will not alter the Constitution as it is at the present time in the slightest degree. So the whole question, Mr. President, in my mind is, do we want to take a step forward in this direction?

I will take up some of the things that the Commonwealth is asked to go into, the businesses that it is asked to go into, and see whether or not it is such a terrible proposition as some of its opponents seem to say. Is there any exigency that you can picture greater than conditions in a hot summer when the younger children of the Commonwealth need to have the milk, which is to support their lives, kept so that it will be digestible and fit for use? Does not that exigency occur every summer? Is there any reason in the world why this Commonwealth should not go into the business of selling to its inhabitants, or a subdivision of the Commonwealth selling to its inhabitants, congealed water, when they sell the fluid water? But that proposition, they say, is socialism. We ask that cities and towns be allowed to take the ice from the ponds and the great lakes in their different communities, and establish an ice cutting plant, or an ice storage plant therein so that every child and every family in that city or town can have ice at something like reasonable cost.

Mr. President, it is only a few years ago since we were obliged to pass a law making it a crime if an ice dealer of this Commonwealth refused to sell to the poor people ice in small quantities. There was a time when the ice dealers absolutely refused to sell ice to poor persons who could not afford to buy any more than five cents' worth of ice at a time. They refused to sell in small quantities and this Commonwealth presents the spectacle to the civilized world of making it a crime when an ice dealer refuses to sell five cents' worth of ice to a

poor person in Massachusetts. Even that law is hedged around with such provisions that the poor persons must go to the ice cart to get ice. They cannot have five cents' worth of ice delivered at their door, but they must go to the ice dealer's vehicle for it and be refused there before it is a crime. I wonder whether the gentlemen who are putting these other limitations on the committee's proposed amendment are willing to say: "We believe that the Legislature at least ought to be permitted to pass laws so that the cities and towns of the Commonwealth can establish ice-houses, and harvest and sell ice to their people at a reasonable cost." Why, we have been told here this year, and we see it in the public prints, that the ice dealers of this Commonwealth met at some hotel in the springtime, and they told us brazenly that they had fixed the price at which every man who dealt in ice in the Commonwealth must sell it, regardless of whether or not conditions in one town are the same as conditions in another, and they told us what we should pay per hundred pounds for ice.

Let me ask the gentleman from Wellesley, does he feel that his amendment should be so limited that no city or town should be permitted to provide for the keeping or harvesting of ice for its citizens unless there was a war, or does he not really recognize that an emergency exists here every summer, in our climate, when ice is indispensable? I should like to see an amendment come from the gentleman from Newton, who made such an eloquent statement on the coal situation, showing that he was at least not in accord with the proposed amendment of the gentleman from Wellesley, and let us decide that in necessary fuel at least the people of this Commonwealth ought to be given the right to buy and sell it at a reasonable price to the inhabitants. But we see nothing of that kind offered. Their whole objection results in this proposition: That under no circumstances can the people of this Commonwealth or its subdivisions do anything toward eliminating the suffering that is brought on the people by unrestrained monopolies and combinations which control the necessaries of life.

Now, let us look at the practical side of this matter, Mr. President. Is it such a heinous thing as they tell us, in permitting this Commonwealth or the cities and towns therein to deal in some of the necessaries of life that are so essential to the health and happiness of the people? Take the little town I come from, the town of Hopkinton. We raise there chiefly farm produce. The working people of the town, in large numbers work in the factories. The men who are running the farms, in the fall, after they have harvested their crops of potatoes and corn, and what not, instead of keeping those things for the use of the people of the town, are obliged to send their produce into the Boston or Worcester markets in order to get their money to prepare for new crops. They cannot wait until the people of the town of Hopkinton are ready to use and ready to buy them as individuals. The farmers want their money quickly, and you cannot blame them. They simply bring their produce in to the Boston market for that purpose. Now, along in December, January or February, then the people of Hopkinton require those things themselves. There is not any supply in the town to meet the demand of the people for the things that these farmers have raised. Everything has been sent out of the town. The grocers or dealers of the town then have to come to Boston, and

instead of being able to buy these very things from the farmers of the town, they are compelled to buy the same crops in Boston. In other words they journey to Boston and buy the same identical things that were shipped out of town in September or October and transport them back to Hopkinton.

See the waste there is there. Would it not be very much more economical if the town were allowed, or the people of the towns acting collectively were allowed, to establish storehouses and cold storage plants, whereby the very things that they raised could be conserved and kept for the time when the people of that community must need them? I cannot see for the life of me why this waste that we see every day going on in our town cannot be eliminated. The waste of transporting out of the town the very things we shall want again, and then bringing them right back again, is uneconomical. With this unnecessary double transportation eliminated we could save at least something for the people and not have them obliged to pay high prices partly due to the cost of this uneconomical and unnecessary labor and transportation.

We are not asking this Convention to pass laws. Why, the men who opposed the I. and R. pleaded with us to trust the Legislature. Well, let us trust the Legislature. It is not going to do anything very radical in Massachusetts. The Legislature reflects the opinions of the people of Massachusetts and will not do anything radical. I can vouch for that. From my experience gained by service in two Massachusetts Legislatures, there will not be any radical action taken if you trust the Legislature with this law-making power. There will be lots of time for discussion and deliberation before there will be any progressive action by that body.

All we ask is a simple change in our Constitution now, — now, when we are here assembled for the purpose of revising or changing our Constitution. We ask that a provision be adopted so that when the Legislature of this Commonwealth desires to act on these matters it shall have the power to do so. We are asking the men who have told us so much about confiding in the Legislature to have that same confidence in it, so that we can empower it with this right. You say that it does not abuse power; you say that it gives ample consideration to questions and we agree with you. We ask you to give it that power. We are not going to establish any laws by our act in passing this amendment. We simply are saying to you: Let the Legislature have the power to act when the time comes that it ought to act, and not limit it to the so-called exigency or emergency clause, because, as has been well said on the floor of this Convention, the exigency, God knows, occurs a great many more times than any of us care to see. I do not know who is going to construe this question of the existence of an exigency. Every time that an occasion for action by the Legislature occurs it has to have an affirmative opinion of the Supreme Judicial Court that this particular time of exigency has arrived, — and yet that is what you are going to do if you limit this amendment to exigencies or emergencies.

I am not going to take up much more of the time of this Convention on this question. It is not any new thing to me. It has been well said here, the necessity for this amendment has arisen a great many times, and it is here at the present time. I have been criticized,

mocked and jeered in former years, and called a socialist and anarchist, because of my advocacy of a similar measure in the Legislature; and to me it is a very hopeful sign for our Commonwealth when this Convention, composed as it is of men of all shades of opinion, are willing to discuss and consider this question as they have at this time. I do hope that this amendment will go through as recommended by the committee. I think it will redound to the credit of this Commonwealth. Its adoption is not going to affect adversely the credit of the Commonwealth or retard business men from coming here. We are not going to make such a drastic change in our business laws as the gentleman from Wellesley fears. We still are to be protected by that Legislature in which he asks us to have so much confidence.

Mr. POWERS of Newton: I desire to make what might be called a change in the figures which I gave here the other day. In discussing the coal situation I gave figures of the cost of bringing coal from the mines in Pennsylvania, without profit to any one, to the home of the consumer. I stated at the time I gave these figures that they were figures which I had secured by an investigation made about two years ago. There is no question but that the figures I gave were applicable two years ago, but are not applicable at present prices. Some of the people engaged in coal production and in dealing in coal have called my attention to it, and said they thought I had misled the Convention by the statistics I gave in my speech last week. I told them I felt sure that I had not in any way misled the Convention by anything I said, because what I then said had all the qualifications, but that I would be more than pleased to give to the Convention those figures, which I have no doubt are correct.

I have taken occasion to go over the invoices of the coal dealers who have brought coal to Boston and delivered it, and I find these to be the present costs of producing coal and also of delivering coal in Boston. I stated the other day that the cost of Lehigh egg coal on board the cars at the mines was $3.20, and that is true, that it was the cost two years ago; but the present price —

Mr. BROWN of Brockton: Have you, in connection with those figures, anything to show what the miner gets?

Mr. POWERS: I was going to state what the miner did get. The Lehigh Valley Coal Company owns mines and produces coal. That coal they sell to the wholesaler and to the retailer at the present time. Two years ago the coal was sold by the miner at $3.20 for a long ton of 2,240 pounds of coal.

Mr. BROWN: The gentleman has not got my question. I mean by the miner the man who breaks down the coal. What does he get a ton for getting the coal ready for the one whom you call the miner to sell? What is the wage cost per ton?

Mr. POWERS: I do not know what a worker in the mines gets as wages. I know what the miner, the one who produces the coal, who owns the mine, I know what he sells his coal for on the cars. Two years ago Lehigh egg coal was sold at $3.20 a ton. To-day they are selling the same kind of coal for $4.65 a ton. The railroads are bringing coal to-day at the same cost as they brought it two years ago to Boston, which is $2.55. The State tax in Pennsylvania remains the same at eight cents. That makes the total cost of the coal when it arrives in Boston on board the cars, with freight paid, $7.28.

Mr. JAMES J. BRENNAN of Boston: I should like to ask the gentleman from Newton if, in his argument, he also is going to talk about the other method of transporting coal to Boston, or any point in New England, by way of water, and the cost of two years ago.

Mr. POWERS: The cost of bringing hard coal by water two years ago was slightly less than bringing it by rail.

Mr. BRENNAN: I should like to ask the gentleman from Newton if he has figured specifically on that, — how much slightly smaller?

Mr. POWERS: Why, Mr. President, there is a competing rate between water and rail. Now, for instance, a car-load of coal which is brought through to Boston from the Pennsylvania mines is charged at the rate of $2.55 a ton. The purpose of making that low rate to Boston is to compete with the coal that is brought via tidewater. The cost on that same ton of coal in Newton, where I live, is $3 a ton, that is, the dealer in Newton, the retail dealer, has to pay 45 cents more a ton, although he is eight miles farther to the westward, than the dealer in Boston, who is eight miles to the eastward, pays on the same car-load of coal. Now, there is but a slight difference between the freight rates from the Pennsylvania mines on anthracite coal, whether it comes by water or whether it comes by rail, because the anthracite mines in Pennsylvania are inland, and the coal has to be brought down largely to Perth Amboy in New Jersey and there loaded onto the steamers and taken around to the harbor in Boston. Then it has to be lightered out from the steamers in Boston and brought up to the wharf. So that the cost is practically the same whether it is brought by water or whether it is brought by rail to Boston.

Mr. BRENNAN: I ask these questions because I think that as far as discharging coal in Boston is concerned the gentleman from Newton, although he has made some study of it, knows very little compared with myself, because that has been my business for fifteen years. When he says that in all cases it is necessary to bring a steamer or barge or a vessel of any sort into the harbor of Boston, or any other harbor in New England, and then lighter the coal, either bituminous or anthracite, I think he is trying to mislead this Convention. One of the efforts on the part of the coal dealer in Boston, or any other port, is to get a vessel of a draft, if possible, to bring it up to his dock and eliminate that cost of lightering the coal.

Mr. POWERS: But the gentleman overlooks the fact that the coal, after it reaches the dock in Boston, has to be distributed, and it is carried up the rivers or it is carried around by rail; and, in those cases, if it goes up the rivers, as it formerly went up the Charles River and as it to-day goes up the Mystic River, it has to be lightered into smaller barges, so that the expense when it reaches a point, for instance, like Brighton, is substantially the same whether it comes by water or whether it comes by rail.

Mr. BROWN: I should like to ask the gentleman from Newton, there being no such raise of wages during the past two years, can he explain why the price jumps? Before we commence to get coal, when it leaves the mines, why does the price jump?

Mr. POWERS: That is assuming that wages have not changed in the last two years, and I have assumed that they have changed. I saw in the paper this morning that the miners were insisting upon what they

said was a further advance in wages. Now, if it be true that it costs the producer, that is, the miner, no more to get his coal out of the mine now than it did two years ago, then his profit must be very much larger now than it was two years ago.

Mr. BROWN: I was about to say to the gentleman, they are now working under an agreement, and the agreement has not expired; I mean the wage-workers. I am trying to discover if there is any justification for the jump in price as you give it.

Mr. POWERS: I do not know whether there is any justification or not, but I am satisfied of this: From my investigation within the last three days, that it costs the retail dealer for his coal in Pennsylvania $1.45 more per ton than it did two years ago.

Mr. BROWN: I do not doubt it.

Mr. POWERS: The cost to the retail dealer for his coal when it reaches Boston to-day on the cars is $7.28 per long ton, which, reduced to a short ton of 2,000 pounds, leaves an actual cost of $6.55. That is a much higher figure than the one I gave last week. Then I am told by the retail dealer that the cost of delivering coal, with the present price of wages, amounts to about $1.50 per ton. I stated the other day that I thought delivery ought to be made for less than a dollar, — 80 cents. Call it $1.50 a ton. That makes the cost to the retail dealer to-day $8.05 per ton, and that allows him no profit upon his capital in the business.

Now there is another explanation that I want to make, and it appears that since the government has undertaken to exercise its influence over the production and distribution of coal the retail dealer to-day can buy direct from the mine. That he could not do two years ago, and that is to his advantage. And I am further informed that within the last three months what is known as the middleman has been largely eliminated.

Now I state these facts believing them to be facts and believing it to be my duty to lay these facts before this Convention while this resolution is under consideration. I said the other day that I did not believe the retail coal dealer, — that is, the man we deal with, — received unreasonable profits from carrying on the business. I am satisfied that the retail dealer to-day is making only a reasonable profit upon his investment in the business of buying and selling coal. And with these facts before the Convention I have nothing further to say upon the coal situation.

I do want to say before I take my seat just a word upon the general proposition. We are trying to cure what is called an evil. We are trying to do it through what is called collective ownership or socialism. We in New England, however, must remember that what we are suffering from to-day is that we are not getting the production that is necessary to supply our population.

Now my friend from Fitchburg here (Mr. Lowe), who always has been more or less of a philosopher and with whom I always like to talk and get his ideas, says that the trouble is that we have left the farm, that we have come to the centers of population and that the time has come when we have got to return to the land. Well, I returned to the land two years ago. I set an example to the Convention. I have had a mighty hard time, though, in dealing with the land the past season. I went into the farming business believing that

I could produce enough on that farm up in New Hampshire to feed the entire population of the metropolitan district, and I would have accomplished that if I had been properly aided by the Almighty. But the trouble was, we have had the driest spell up in that section that we have had for seventy-five years. We have had no rain since about the first of June and what little was left was frozen up about the first of September. I have a good deal of sympathy with the farmer who lives in that particular region. But let me say to you, Mr. President, and to you gentlemen of the Convention, that the trouble that has come to us in New England is that we are not self-supporting. Now Mr. Theodore N. Vail, who has studied this question as carefully, perhaps, as any man in New England, says that New England could become self-supporting agriculturally if the people saw fit to do it. He firmly believes in that proposition. My memory goes back to the time when the New England farmer produced practically everything that was necessary for the support of his family. Years ago they decided they would go into what was called specialized farming and give up the general farming. In the old days they raised corn and they raised all kinds of grain; they raised all kinds of stock. They supported the family and they had produce that they sent to the centers of population. Then they found that they could not compete with the great west in raising corn and in raising wheat, and they gave it up. And what has been the result? The result is to-day that without grain they cannot feed their stock; they cannot afford to buy grain of the west at present prices. I agree very fully with my friend from Fitchburg that the time has come to return to the land. My belief is that New England, by cultivating the land, by producing for feeding its population in this dense territory, can change absolutely these conditions that we are complaining of to-day and attempting to change by legislation.

Mr. Brown: Knowing that the gentleman has the knowledge, I am going to ask him this question: Does he not think that the economic distance between the west and the east as expressed in transportation figures has increased so largely within a few years that we can economically compete with the west if we improve our opportunities? I am calling his attention now to the economic distance we are from that coal mine because of the charges they put upon us, and it is equally true of grain. I think he gets my question.

Mr. Powers: I think the gentleman from Brockton is quite right. But I have taken more time than I intended to. I simply throw out this idea, as to whether legislation that has in view the promotion of agriculture in Massachusetts is not going to serve us quite as well as any legislation that we are likely to enact or any provision that we are likely to put into the Constitution excepting greater authority to the Legislature. In other words, has not the time come when we ought to look into this question of production? In other words, has not the time come when we ought to see if we cannot increase what may be called the food production of Massachusetts and to study the methods by which that increase may be assured?

Mr. Clark of Brockton: I was very deeply interested in the remarks by the delegate from Newton this morning, and especially in that part of the remarks that refers to the New England farmer. I am in deep sympathy with him on that score. And inasmuch as he

seems deeply interested I should like to call to his attention some of the remarks made by the Commissioner of Food and Markets of the State of New York. "There is only one big question to be settled in connection with the high cost of food, and that question should be settled once and for all," said John J. Dillon, State Commissioner of Foods and Markets of the State of New York. I shall not read all that he says, but I shall give a few of the facts that he states. He says that after an extended and careful investigation of the food situation in the State of New York he finds that out of every dollar that the consumer pays, only 35 cents goes to the producer and 65 cents remains in the hands of the middleman.

Now, Mr. President, I should like to inquire of the honorable gentleman how he will correct and remedy this condition that allows the middleman to retain 15 per cent more than a half of all that the consumers pay? How is the farmer to be induced to increase his production under these conditions? Furthermore, Mr. Dillon said to the Legislature of New York last year: "Give me the funds with which to enter upon this work and I can reduce very materially the cost of living to the consumer." The Legislature, controlled by the big interests, so he says, refused to give him the money. He was powerless. I simply give these facts in addition to statements that I made the other day, because they have come into my possession since that time.

Mr. DONOVAN of Lawrence: First I wish to call the attention of the Convention to one argument which might be advanced in support of the resolution offered by the gentleman from Brookline. It is contained in chapter 342 of the Acts of 1917: "An Act to provide for the better defence of the Commonwealth in time of war." In section 6 it is provided that —

> Whenever the Governor shall believe it necessary or expedient for the purpose of better securing the public safety or the defence or welfare of the Commonwealth, he may with the approval of the Council take possession: (*a*) Of any land or buildings, machinery or equipment. (*b*) Of any horses, vehicles, etc. (*c*) Of any cattle, poultry and any provisions for man and beast, etc.

And then this language is used:

> for the better protection or welfare of the Commonwealth or its inhabitants.

Going on:

> as he shall deem for the interests of the Commonwealth or its inhabitants, and may in particular, when in his opinion the public exigency so requires, sell or distribute gratuitously to or upon any of the inhabitants of the Commonwealth anything taken under clause (*c*) of this section, and may fix minimum and maximum prices therefor.

And, gentlemen, that came from the conservative Legislature which we have tossed about in this Convention. But there has been a question raised as to its constitutionality. It is imperatively necessary that that bill be constitutional. And as one argument I advance in support of the resolution of the gentleman from Brookline that if we put this on the ballot it absolutely makes this bill constitutional.

We, I believe, from our standpoint can go a little farther than the Legislature and pass the resolution offered by the gentleman from Brookline.

The gentleman from Boston in the first division (Mr. Balch) says he sees no reason existing for this resolution, — no reason existing, —

and he talks about a certain emergency that we are in now. Why, that joke of the high cost of living, which has been a serious joke, was on the vaudeville stage before this war began. It is no emergency of to-day; it has been on for ten years and probably back for twenty years. We have talked about the high cost of living and we have seen things soar and rise. He objects because he says it extends to all the necessities of life. If it is good for some of the necessities of life why is it not good for all the necessities of life? He fears that the establishment of plants will commit the State to trade and he doubts the wisdom of doing this, and he says that there is waste when the State goes into trade. There have been failures, probably, in the past. But I call his attention to this: When he says there is no reason to believe that it will lower prices, I say this: There is reason to believe, even if the other is debatable, that it will tend to stop the rise in prices. And I call his attention to the fact that with the institution of the parcels post system by the Federal Government, — I ask him if he has the figures; I have not them available, but I know in a general way that the cost of sending, consigning and delivering express packages dropped in some cases over 50 per cent. The extension of the parcel post meant there that a government business brought down monopoly almost to its knees.

Another thing: This is not giving power directly to the cities to do this thing without the permission of the Legislature. And I am sure from the defence made by the gentleman in the first division (Mr. Balch) and his friends of that Legislature, he should be the last one to fear that they might do something which would be unwise for the Commonwealth of Massachusetts.

I find it hard to make consistent the argument used by the gentleman in the first division who spoke first in favor of this amendment and the gentleman from Boston in the first division on the question of labor. I do not represent organized labor, but when one man says: "The greatest fear is from organized labor," and the other man in opposition says: "Give the laborer more money so he can pay for these things," I fail to find how these two arguments can be consistent in opposition. I do know this, gentlemen, that in my city of Lawrence there has been an unreasonable advance in the price of ice this year. I know that, and I know that there are hundreds of families in this Commonwealth and a great many of them in my city on whose table meat never goes because of the high price. And when I hear in this Convention men talk about abolishing the middleman and of the fear that there may be suicides or other harm come from it, I ask of them: "What of the thousands of people in this State who probably are nearly starved or at least robbed of all they earn to pay for the cost of living?" I have no sympathy for the man who retains 65 cents of every dollar that is spent for food or the necessities of life. I tell you, gentlemen, that this measure for practical and immediate results is the most important resolution that has been before this Convention since we have sat here; that in my mind it is more important than any initiative and referendum, because the initiative and referendum to the general average person is in the abstract until it is instituted and takes some time before it is put into practice. But this measure is of the utmost vital importance and it will raise the estimation of this Convention in the whole Commonwealth of Massachusetts if we get behind

the resolution offered by the gentleman from Brookline and pass it. [Applause.]

Mr. BUTLER of Brockton: I should like to ask the learned gentleman from Wellesley (Mr. Pillsbury), if his amendment is accepted, if it would not stop the city of Brockton or any other municipality from erecting a slaughter-house or cannery to be used each and every year as the product is raised for the benefit of the people. I believe the committee on Public Affairs has been very careful. I believe the last measure that they submitted is about as good as it can be and be of benefit to the whole people.

Mr. WELLMAN of Topsfield: We all, I suppose, desire that the necessities of life shall be cheap and abundant. It is proposed to make them so in this resolution by having the Commonwealth and the various cities and towns go into business. It is assumed, apparently, in this debate, that if this is done it will make these necessities of life abundant and reasonable in price. I have listened in vain for anything in the line of proof to meet that proposition. It does not seem to me that we should pass this resolution unless that can be clearly shown. It seems to me that there is the very greatest danger that if this business is entered into by the Commonwealth and the cities and towns it will have precisely the opposite effect from what is proposed. I happen to know something about the matter of production in this Commonwealth. I live in a community which is a farming community in the midst of manufacturing communities. I know something of what has been done this year in regard to food production. I believe without doubt that in Massachusetts we can produce vastly more than we are now producing. I have seen in that community herd after herd destroyed and sold, and milk is high and difficult to obtain. But I believe with all my heart that the passage of such a resolution as this is a blow at the production of milk and other food-stuffs in this Commonwealth, and I think that that should be seriously considered when we pass it. I do not see, Mr. President, how it is reasonable for any man who thinks upon this subject and understands what is going on in Massachusetts to expect that we should do other than decrease the production in Massachusetts by the passage of this resolution.

Is there any reason whatever to believe that the cities and towns in this Commonwealth under the management we now have can do successful business? Is not the reverse absolutely true? Is it not true that we are at our wit's end to make them do well the business they now have, and if we put more burdens on them is it not reasonably certain to increase the expense and prevent production? I cannot see, Mr. President, what the gentleman imagines will happen by the passage of this resolution, with the facts of every day before us.

Now this scheme, I am aware, is worked in Germany, and I know perfectly well what some of the Germans think about it, for I know what they have said about it. They have said that their system would fail absolutely in America so long as we keep in our cities and towns a democratic system of government. They believe that State collectivism can succeed only when there is despotism and autocracy at its head. That is the German system and I hope we shall not adopt it. I ask that the members of this Convention pause before they pass a resolution which in all its tendencies is directly the opposite of what it is proposed to accomplish. [Applause.]

Mr. ADAMS of Quincy: I am delighted that the gentleman in the first division (Mr. Wellman) has made the statement that he has, because I take it that that is absolutely self-evident, that we have got to change our system of civil service or we have got to give up all idea that we ever can become a cheaply producing community. That I take to be absolutely self-evident.

Continuing after the recess Mr. Adams said:

I apprehend that the moment is approaching when this Convention may reach the parting of the ways. We either can adjourn altogether and go home and mind our own business, when at least we shall not be ridiculous, or we can treat this business by framing a Constitution seriously. We have not so treated it, in my opinion, hitherto. A Constitution is not a thing which you can handle in scraps. A Constitution is a whole. It is based on one or another of two systems of human competition, and you have got to take one or the other of those systems, for government cannot be maintained otherwise. If we propose to leave things as they are then let us go home; and if we do not propose to leave things as they are, let us consider what the present condition of the world is and act accordingly. It would take us some considerable time to get to the bottom of the difficulty we are in if our difficulty is to be measured by the gravity of this war.

As I take it, this war measures our responsibility. It is measured by that, and by nothing else. And this is the reason why: It is measured thus because war is nothing but human competition in its intensest form. It is only a form of conflagration, of fire. No country can go through war and not have its competition changed, its methods of competition changed, because its environment has changed. The crucial question now is: What is the issue before us? The issue before us, to my mind, is perfectly obvious. It is absolutely plain. We have been brought up in one system of competition, that is, the individualistic, in which the individual takes the rake-off and is encouraged in doing so, and that system is founded on waste, and on nothing but waste. Or you can have conversely a system in which the rake-off goes to the community. It is a system commonly called socialistic. You can call it anything you like, collective or anything else, but it is a cheaper system than the other. The other system, the individualistic system, cannot stand against it if the collective system is properly administered. That is certain. It has been proved in this war on a gigantic scale, and if we want any further proof we have only got to go on and try the individualistic system ourselves, in competition. We shall find out very soon. Let us go home ourselves and start in individualistic competition. We can go home and prove it. We shall fight until we have finished, by exhaustion probably, and we shall find out then which is the cheaper, which is the more effective, the collective or the individualistic. Now, then, gentlemen, this is a serious question, and we cannot blink it, and if you want to go home, go home and be honest about it; and if you do not want to go home, do not fuss about it, but take hold of it yourselves at the bottom and consider it seriously. There is no other way out of it.

Here we have got all sorts of opinion. We have taken this thing up by odds and ends, making confusion, and we never can arrive at anything else on that basis. The solution has got to be found in the

scientific way or left alone, and as we are situated at the present time the best thing we can do is to leave it alone. I do not think we are prepared to take it up scientifically. I do not think this Convention is in a scientific temper. But if it is in the scientific temper let us be serious about it. And the first thing we have got to consider is the rake-off. Who is going to have the rake-off? Who is going to take the profit? When you have decided on that, then you can decide. Until you have determined that, it is no use.

My friend in the first division just now said that the desirable citizen to care for is the individual, — that is frank, that is his theory, — and there is the issue. I do not believe he is right; but we can try it. In five, ten, fifteen, twenty, thirty, forty years we shall know, because this thing is not going to be put down, this convulsion is not going to be stopped quickly. I do not mean to say that the war will be continuous. I do not at all mean to say that it will last without intermission. Take, for instance, the last great war of this kind that happened. It began on a modest scale. It was a seven years' war. They then had peace which lasted awhile and then the natural sequence came in the American Revolution. That consumed six or eight years, and then peace intervened for another six or seven years, and then the French Revolution opened, which ended with Waterloo in 1815. That is sixty years, sixty years of one great catastrophe, which had a perfectly definite beginning and a perfectly definite conclusion and ended at a certain point, before they arrived at an equilibrium. That equilibrium lasted fifty or sixty years and now that same thing is up before us.

I proposed an amendment to this proposition of the committee, not because I expected this Convention to adopt it; I am under no such delusion. I do not think this Convention is going to adopt that proposition. I think it would be wise if it did, on one condition; that is to say, supposing our society has come up to the point where it can administer the country so that the system can be well carried out. But that can be done only if you have a proper civil service, if you have a proper organization, and I would be the last to suggest that we should launch suddenly into collective administration without any foundation for it. That would be suicidal, of course, and every man who knows anything about these questions knows it would be suicidal. You cannot take a great Nation and throw it suddenly into complex collectivism and hope to succeed; it is impossible. We have got to proceed step by step.

My friend from Boston in the second division (Mr. Quincy) has got a series of propositions which he proposes presently to introduce. Part of them relate to the civil service. His success in carrying his propositions would affect very much, of course, my views of the judiciousness of adopting my resolution. It is no use my advocating such a resolution as I have introduced unless the gentleman from Boston has a very considerable success with his propositions for a civil service.

Now, that is an instance of how these questions are collective. They hang together. You cannot have a single alteration injected into an antiquated Constitution. You cannot put new wine into old bottles. That is utterly out of the question; it always has been ever since the time of the Scriptures. You cannot put new wine into old bottles.

We are undertaking to introduce new wine, and we cannot put it into the old bottles. We have got to have a new Constitution to suit new contingencies, or else we had better go home.

Mr. Brown of Brockton: I want to ask the gentleman, would he rather take chances with the present system or with the possible danger that he speaks about in this collectivity?

Mr. Adams: Frankly, Mr. President, I would rather take chances as we are, because, there we have something which at least is now comprehended. It is at least solid. It may be 150 years old, may be 200 years old. It may be nonsense under the conditions under which we are now living. All the same, I would rather take my chances under that than get in the condition which Lincoln feared, — that of swapping horses when crossing a stream. If the gentleman is not prepared to go into this issue to the bottom, and consider this thing scientifically and properly, he had better go home, and so had the rest of us. He asked me my opinion. I can give him my opinion only. That is my frank opinion. This condition of things is very serious. It is not a laughing matter. It is not safe for us to say: "Oh, we don't happen to like the German system. We won't have it. We won't have it; we ought not to have it." For it is there.

Mr. Donovan of Springfield: I should like to ask the gentleman if he believes that action taken by this Convention would in any way stay the forces that are at work in the direction to which he refers.

Mr. Adams: I do not believe it would stay the forces in the least. I think it would disorganize us, that is all, and we do not want that. God knows we are disorganized enough; we do not want to be disorganized any more. Stay where you are or move ahead until you get somewhere. Here half this Convention say: "Oh, you must not, you know, let a town have a common cow. You must not let anything be done for the public. If you do you are going to ruin some producer or other." For Heaven's sake, then, let us go home and satisfy the producer, satisfy the individual. Let us take care of him. Let us take care of somebody at least. But if you really are going to do men's work, why, then, you have got to start at the beginning and do something constructive and recognize that it is just as possible for men to administer a great community as a small one. It is just as easy, or at least possible, for us to administer ninety million people as it is a household. Why not? Of course it is. It is only a question of pressure, of the amount of pressure we are subjected to, and we shall find presently we shall administer well when the pressure is hot enough. Till then gentlemen who do not believe there is going to be more pressure on them, that this is only a summer shower, had better put up an umbrella and wait until it is over. It is perfectly easy! We shall all feel well in the end! It may be a severe pull before we get there, but if you like it, do not stop. Adjourn, go to the people and say: "No, all is perfect, we have not anything to suggest." Take your risks. That is the best thing to do. Gentlemen here say: "It is all right, it is perfect, our conditions are those which were created by our fathers, who were very wise men, and we have followed them since, so there is nothing to be suggested. We have no suggestion. On this we are prepared to stand." But we must understand this question. We must meet it. Conditions are not what they were. We are fighting, we are in a great war, and that means change; and if we

are going to meet the conditions of the war we have got to consider changes. It is not a thing which is our choice; it is forced upon us; it is inevitable. We cannot say, as a gentleman did: "This is a German thing. We won't have anything to do with the nasty Germans." We have got to have to do with them. It is our misfortune very likely, but we have got to have to do with them. We cannot get away from them. And mind you, gentlemen, it is going to be just as bad if we do not fight as if we do.

I do not care to go into the subject of Germany, because I do not think it relevant; but I do know that you have got to have something that will compare to it or you will perish. Now, you can die if you will. Who cares? Nobody but we. Death is a matter for us. It is nobody else's affair. Who cares? Take your choice. If you are not going to do anything about it, you take your risk of being strangled or starved or having your throat cut, or something similar; if you do not think there is any risk go ahead and take your chance. I personally think it is wiser to take all precautions, if you can; but if other people think differently they must. I am an American citizen. I am going to take my risk with the rest. It is our own affair. It is collective, of course. But there is this that we always must remember and from which we never can escape, — that we are operating with methods that are as to modern methods what the methods of a stone age savage are to ours. Now, that is a fact from which we cannot get away. We are stone age savages in regard to the administration of modern affairs. We have the same chance of prevailing in this competition as they would have, because all competition is raised up by the intense pressure of modern warfare, of modern competition, to a level on which our fathers never dreamed of standing, and their position is to ours what that of the stone age savage is to ours.

I have but one more word to say, and then I have finished. It is in regard to the explanation of this resolution which I have submitted to this Convention. It cannot be injected suddenly into our civilization as our civilization stands. No man admits that more freely than I do. From night to morning we cannot become successfully collective. But it can be a suggestion. It can be something that we can consider seriously and take steps to approach. In my opinion our arrival at that standard is a question of our National safety; we must get there or run very great risk of destruction by and by. We must get there. That is what I consider the first step, and I consider it by far the most important step that can be presented to any Nation. The initiative and referendum is nothing by the side of it, absolutely nothing; it is trivial, it is negligible, because our government, our social system, our institutions, have got to be remodeled if this thing is to be carried out. And, gentlemen, in my humble opinion this war has got to go on until institutions are remodeled or until we perish.

Mr. PILLSBURY of Wellesley: I ask leave to make a word of explanation. At the middle of page 2 of the supplementary calendar which appears on our desks for the first time this afternoon, and which I had not seen until this moment, appears an amendment offered by me to the pending amendment moved by the gentleman from Brookline. That is superseded by the amendment which precedes it on page 2. The only amendments of mine at present pending are the one at the head of page 2 and the one at the foot of page 2 moved as an

amendment to the amendment moved by my friend from Boston (Mr. Edwin U. Curtis) on the left. If I am responsible for betraying our accomplished secretary into a mistake in the calendar, as very likely I may be, I hereby tender him my most sincere apologies.

Mr. Edwin U. Curtis of Boston: I want to say a few words about the amendment printed under my name, the last under consideration to-day. I have been a very constant attendant here since the middle of June. I find myself now, the first of October, to have been greatly instructed. I have learned a great deal. I have learned among other things patience, and that tolerance of the views of others is a good thing. I also have been greatly amused at times. Just now I am greatly amused to hear a distinguished author talking about rake-offs. I never supposed that an Adams of Quincy knew anything about that subject. I agree, however, with the gentleman from Quincy (Mr. Adams) in a great many things that he said. He said we had come to the parting of the ways. Gentlemen, we shall be there at three-thirty or thereabouts, and we shall be there many more times on the other resolutions that we have got to decide between now and the time of adjournment. I also agree with him that perhaps we had better go home. I am afraid that some of us will have to go home for want of money or to provide for our families if this continues much longer. Whereas I thought the salary voted at the beginning of the session was large, I now begin to think it was very small.

We are here, gentlemen, to decide upon one of two things. Either we are to pass an emergency measure pure and simple, as Mr. Adams says, to take care of the great emergency of this war, — and there again I agree with him, an emergency does exist and I think we ought to do something, — or we are to give the Commonwealth a right to go into any kind of business practically that it wants to now and forevermore, on every occasion that it desires. We also are giving to every city and town in this State the same right. So that we vote with our eyes wide open, either that the State shall become entirely socialistic or that it shall at times become so and at other times not. That is the principal difference between the amendment that I offer and that of the seven of the committee represented by Mr. Anderson.

Gentlemen, in my amendment I provide for one thing that is not provided for in any other amendment, and that is temporary shelter, and I put those words in there with the intention that if we have a great conflagration somewhere as we have had in the past few years there will be no doubt as to the right of the Legislature to provide temporary shelter for the women and children who have been shut out of their homes. Again, in some of our manufacturing cities the tenements are owned by the mills. There may be a strike. Laborers may be right, mill men may be right; I do not pass on that. But at the same time the mill man may say: "Vacate my premises". It may be in the middle of winter, and the people may be in the condition that they were in one of our western States, and the Commonwealth have no power to overcome it. Therefore I say that the State should be in a position to provide temporary shelter when an emergency exists. Those words I believe appear in no other amendment.

I also have provided for feed for animals, so that there shall be no mistake as to what the word "feed" means. I think in the resolution of the gentleman from Brookline (Mr. Anderson) he uses the word

"feed". Some people might think that was something for human beings only.

Gentlemen, the thing that I think is most vital here next to the emergency proposition is the giving to thirty-seven cities and 317 towns the right to do the purchasing. I believe that the Commonwealth should do all the purchasing, and not have 354 other communities bidding against it and in competition with it. Neither do I believe that some of these small towns are in shape to go into that business of buying. They would have no show at all in the open market against the bigger cities and towns. There are many other reasons why I do not think the cities ought to go into the business, which I will not go into here, but which I think every man knows. If you have one purchasing power, namely, the State, you can expect the State to get as good a figure as it is possible to get, if it builds up a machine by which to do the business, and then resells to the cities and towns and lets the cities and towns resell to their inhabitants. If, in buying coal, the city of Boston is bidding against the Commonwealth of Massachusetts and the city of Lynn is bidding against the city of Boston, it does not seem to me that anybody here would think that it is a proper way to get the best possible price, because everybody knows that in buying in large quantities one buys cheaper. I have got one more amendment here which was sent to me as a suggestion; that is, that the State should have a right to resell to the inhabitants of other States. That was for the reason, as expressed in a letter to me, that possibly the State might find itself with a lot of goods on hand which it could not dispose of, the market having dropped, and it would give it a field beyond the field in Massachusetts. That I have not included in the amendment, and I do not offer it at the suggestion of the committee or any member here.

I also have left out the word "producing" that is in the committee's report, believing as I do that with the amendment presented by myself all necessary authority is given for an emergency, and when this came up first I never supposed it would apply to any other purpose than an emergency.

In case the Legislature is not in session, I leave the right in the Governor to determine when to do it, and nobody here need have any fear of that. I followed the legislation of last year. I do not recall a single recommendation that the Governor made on account of the war, an emergency recommendation, that was not taken up immediately and passed by the Legislature.

Gentlemen, among other things I have listened to here is talk about the unseen influences over this Convention. I do not believe, gentlemen, there is any improper unseen influence in this Convention at all, and I do not believe anybody else here believes it. I believe that every delegate here is an honest, straightforward, conscientious man, and that he votes as he himself thinks is right. I believe also that he tries as hard as he can to carry out his own purpose, and that I admire and believe in. I think we should make our fights quite as hard as we can, and when we are defeated let us take it cheerfully. I made the statement that the resolution was reported by seven of the committee. I did not mean that, sir. I meant that the gentleman from Brookline stated this morning that his amendment offered to-day has been seen by seven of the committee, — I think that was right, — and that he

said at that time that that was all he could get together this morning. I understood that when the original report came in there was one dissenter, and I do not wish to misstate anything.

Mr. BROWN of Brockton: I want to ask the delegate from Boston if he has contemplated the possibility under his amendment, which I deem in force, that the Commonwealth of Massachusetts, in its sovereign capacity, might come up against Pennsylvania on this very self-same coal question.

Mr. CURTIS: I say that I should be almost sure that they would come up against Pennsylvania and every other State in the Union. And, gentlemen, that is exactly why I do not want the 354 cities and towns also to be going up against them. My amendment is good, I believe, from a safe business point of view, and you gentlemen I know will agree with me that ought to be done if nothing else is done in this amendment.

I was just about to finish up, gentlemen, by saying that I believe that every man in this Convention, whether he be conservative or radical, or whether he be socialistic, is here to determine these questions in his own mind after listening properly to other people, and I think we should get along a great deal better here, we should have a great deal less friction, a great deal better feeling, if we stopped talking about these outside influences. I have not seen any of them. I do not believe anybody else has seen any of them. Let us get right down, as my friend says, to business, or let us go home, and let us not be talking about each other any further.

Mr. WILLETT of Norwood: First let me say that I am heartily in sympathy with the measure as reported by the committee. Although I am identified with the conservative business interests of the State, I am not fearful that this opens the way for socialistic legislation; I believe that it is a conservative amendment in the broadest use of the term. The Commonwealth already is in business. The biggest business in the Commonwealth is the business of the Commonwealth. The fear that my friends seem to have is that if the State undertakes new responsibilities we will give to those new responsibilities no better attention than we now give to the business of the State as it is at present carried on. I for one believe that whenever it is to the advantage of the State as a whole to broaden its present business undertakings, it is justified in doing so and the Legislature should have the power to provide for such action. We can trust ourselves, in my judgment, as to how far we may safely go, and I would deal with the matter from the standpoint of having great faith in the ability of the Commonwealth to deal wisely with these questions.

I think we shall all agree that if anything is to be done along this line it is imperative that it be dealt with in a businesslike way. We learn from the friends of this measure in the committee that they do not ask that anything that shall be considered under it shall be done on a basis of charity. The proposal is that the Commonwealth shall take up only such matters as are for the interests of the community as a whole, and for which it can furnish the machinery better than any other agency, and that it shall undertake these things only in case of public exigency. Now, as I already have stated, it is important that whatever is to be done shall be carried on in a way so that they shall properly serve their purposes, and it seems to me that the amend-

ment which I have submitted will help to insure the conduct of these undertakings on a business basis. I think I am justified in saying that at least it has the approval of the chairman of the committee which reported the resolution. Proper records and accounts will keep these matters before the people just like any business proposition, so that the costs in the different cities and towns can be compared from time to time.

While I do not favor the State going into competition on matters which can be handled properly by private initiative, I think it would be interesting to see the test of actual competition on a business basis between public enterprise and private enterprise. I believe that if this was done our ordinary public enterprise would show up very badly, and as this fact came home to us as citizens of the Commonwealth, it would serve perhaps to awaken us to our responsibilities of citizenship, with the result that the citizens of all classes of the Commonwealth would be influenced to give to the service of the State the best that their abilities afforded, rather than continue their present neglect.

How many men we meet who refer with great satisfaction and pride to the fact that they have voted at the primary and therefore feel that they deserve great credit on that account. We shall not have good government until the average citizen is ready to go further than that. To get results we have got to give to the business of the State and to our communities the best that we have in ability, judgment and service.

In conclusion I again wish to say that I hope this amendment which I have offered will be accepted. It is a safeguard for the measure, and it establishes a principle by which, through good accounting methods, the people of the Commonwealth may know what is going on under any legislation that takes place as a result of the acceptance of this resolution.

When the people know the real facts, then they will find the means and the remedy, and as a result we eventually shall be able to handle the public business in the best possible manner. Any activities attempted under this resolution will be kicked out unless the people can be convinced that they are being carried on in an efficient and businesslike way.

Mr. WATERMAN of Williamstown: We all have listened as attentively and patiently as possible, but I feel now as though I ought to give utterance to a few thoughts that have occurred to me by the suggestions of speeches and remarks in this Convention, and also by experience in life. I think it is well to consider the past before we leap very much into the future, and if the past is good, hold on to that which is good and then take that which we may decide is better.

First, I should like to make a little statement regarding the coal situation that was talked about so much here last week. I have been in the coal business a great many years, and I think I know some of the evils and have suffered by them; so that I am not now in that business. A great evil comes because certain agents and large dealers accumulate large quantities of coal and then sell only on the highest pressure and price. The remedy lies, I believe, in National law compelling all sales of both anthracite and bituminous coal only from the mines to the individual, retail distributor, the corporation actually consuming the product, in fact, from the actual mine owner to the actual consumer, and to promote this legislation it should be the

work of the States with the National government. The States should work for National laws, because coal is a necessity that we have got to have, in New England at least, to say nothing about all the rest of the United States, and I think that that would be a proposition for the National government to control. So far as its paternalism toward the whole people of the Nation is concerned, it is reasonable.

Now in regard to what the coal commission at Washington is trying to do. I understand that they have allowed seventy-five cents extra to the independent coal dealer, above the mining and large dealers. That is where I believe evil comes in. If they had put those independents on the same line as the owners who produce 90 per cent of the coal they would have cured a great deal of the evil, because, in my experience of thirty-five years, with any excuse or any little interference, immediately, if you are buying large stores, your shipments begin to grow less, and finally you are forced to buy independent coal of the men who come around and have only ten per cent of the product of the mines. They have coal to sell, while the owners of 90 per cent have none with which to supply your needs. So that they have been able to load their coal onto these speculators, and, in addition to that, their coal that has been rejected as not up to the standard, — and load it, too, onto the public. I think you all will testify that this coal that is bought when there is an emergency is very poor coal, running from twenty-five to thirty-five or forty per cent slate, and causes constant grumbling. I have gone through that experience time and time again, so that I feel as though there might be something done if they would treat them all absolutely alike. In past years, especially from 1902 to 1912, these independent dealers would go around and offer to sell coal to you for forty to sixty cents a ton less, showing that they could do the business cheaper than the other people did, and sometimes they would sell it to you. It generally was pretty poor coal, but under an emergency, when people in the cold of New England will buy anything that is offered that is black, they have been able to work their trade.

Now in regard to the decision of each member here on the questions we are trying to solve. The honorable gentleman from Brockton (Mr. Brown) last week with mighty voice called to all those he thought were on his side to come out and help him. Why, that is just exactly what I believe every member of this Convention is trying to do so far as his ability will allow, — to solve the question in a reasonable way, not because we have got some idea that we think is a panacea to cure it, but to try to decide by what our experience has been rather than to jump into some theory caught upon it with the midnight oil. I believe that the amendment offered by the gentleman from Wellesley (Mr. Pillsbury) is an amendment that would meet the situation. As far as the Legislature is concerned, I think those who have had experience in the Legislature will readily agree that the Legislature will join in any opportunity to help the people. In 1915 they passed emergency legislation appropriating $150,000 at that time when things were getting hard, and then again this last winter the Legislature fairly fell over itself to meet everything suggested by the Governor for the emergency, giving him power that perhaps the Governor of Massachusetts never had had before, and they did it because it seemed as though the case demanded that sort of legislation. I think you can

trust yourselves, — and yourselves are the legislators, — to meet the emergencies as they come.

The history of public ownership has not been in Massachusetts anything very creditable. Years ago they bored the Hoosac tunnel at an expense to the State of about $18,000,000 to $20,000,000, and it also had beside the hole some fifty miles of roadway, and they ran it as long as they thought they could afford to run it. As has been the case with other enterprises of the sort they were very glad to sell it to the Fitchburg Railroad corporation for $10,000,000 and take in pay $5,000,000 of preferred stock and $5,000,000 of common stock. The preferred stock paid dividends, but the common stock never did. I can remember very well when the late Hon. Edward Bradford said to me with a great deal of elation: "Since the Governor has sold the Fitchburg Railroad to the Boston and Maine Railroad we already have put on to the credit of the State $5,000,000", and the common stock was inventoried at nothing. Then that even did not seem to work very well. A little later we were selling that railroad for $10,000,000 again; the Hon. W. Murray Crane in his wisdom as a business man sold the road, with the approval of the Council, etc., to the Boston and Maine Railroad and took in return $5,000,000 of gold bonds, bearing 3 per cent, and $5,000,000 of registered bonds, bearing 3 per cent, and those all paid their dividends up to the time the Boston and Maine Railroad went into receivership. I believe, however, that in time that will be paid in full; that there will be no loss there. But the point that I am trying to make is that the Commonwealth of Massachusetts, with its experience of the years gone before, was very happy and gloried in the restoration to the Commonwealth of Massachusetts of $5,000,000 and congratulated itself that it was out of the railroad business.

Now, as far as trying to work with the State at large is concerned, that has been tried over and over again. Governor Bradford, with his little company down at Plymouth, tried it there, and they succeeded in accomplishing nothing until each one was allotted a portion of land and went to work to produce something to save them from debt and starvation. And it also was true in like manner in the Colony which tried to establish itself in Virginia. They tried several times, but when the individual interests were allowed then the Colony began to grow. Australia has gone into legislation of this nature proposed to-day under this resolution to such an extent that the farmers there are in distress continually. They have been the ones to suffer all through. There have been certain interests and certain cliques, certain public officials, who have benefited by legislation, but the people as a whole, who have got to bear the burden, are suffering largely.

It is in human nature that if we can get a thing easily and if we can get a good place we do it, and we do not go much beyond that; but when you have got to do a thing there are certain powers that come to you that will accomplish the object desired, and the person is constantly helped. The help that is not of one's own efforts amounts to very little; but he who takes hold of the thing to work out from all his mind will develop, generally is the successful person in this world, as far as I have been able to observe.

Now look at the business of cities. There is legislation continually brought before the Legislature, asking for this, that, and the other remedy for the evils in the city. You all know how that is done in the

cities and in the towns, — how they kind of "let out" a public job. Nobody really is responsible. "The public is rich, and it can stand it." All those elements enter into the prosperity, or rather the lack of prosperity, of those communities, hunting for those jobs all the time. Then look at the State commissions. Here you have 127 State commissions, and you wonder when you really are going to stop. You propose to do more and more of that, turn all the cities and towns into a commission and let them go to it. I submit to you, Mr. President, as a business proposition, as you men have found it in your day from boyhood up, that you have got to sacrifice something to get something. There always is a lot of sacrifice in order to accomplish something. The law of compensation works continually in private as well as in public, and I believe we have got to consider that also.

Then another thing, in public ownership who stands the loss? The public, of course. You forget all this expense, this double expense of public management, which I have heard and read time and time again is one-third or one-half or perhaps more than private management, and it is well understood. There is reason enough that private management shall produce the result desired. As far as the evils are concerned, I believe it is in the public power to correct a great many of those evils by proper legislation, not in the way of making worse by giving more of the power that has caused those evils. The public always stands the cost, and that cost is lost in taxation, and so it is forgotten by the individual for the time being, because the public pays in that way. Now look at our State tax, — $10,000,000 a year. Twenty years ago it was about $2,000,000. We have got from all of the improvements some advantages, but more expense has come because of the public management which is entailed in the commission and public control. Competition I believe is one of the very best benefits of society. Not that it is fully the cure for all evils, but that it is one of the cures. To lose that competition would be a loss to the public, but there can be a mixture of competition and a certain kind of supervision by the State. We have seen that in many instances, and it is not necessary to go into the detail of it.

And then another thing. I believe that the least governed is the best governed. The old democratic idea was to have as little government as possible, and I believe in that to-day. Although I am a Republican my ancestors were all Democrats, but they were not for a socialistic government. So that each individual may work out his own salvation, and he can do it in a republic. You cannot do it in a monarchy. You have got to be servants and toadies in a monarchy, but in a democracy you are the judge and the conductor of your own salvation. You become an owner; you are not all the time a servant, but you become an owner, and that very prize is worth striving for even to the end of a long life.

So, Mr. Chairman, in conclusion, I believe, with private enterprise properly and honestly conducted, that the present state of legislation at which Massachusetts has arrived in its Constitution and in its Legislature really is the last word as far as successful democratic administration is concerned, coming from all the ages back. I know nothing better. There are panaceas that have come, so said, in other States and in other places and in foreign countries. I believe foreign countries are not a parallel to anything that we can do here. They are in a

monarchy. We in a democracy should each work under his own hat and be men. And so I believe that the sticking to the old democratic idea of working out one's own salvation, with such proper standards and checks as the mind works out in the body politic will meet the evils that so many are afraid are existing. So, Mr. President, I would favor the Pillsbury amendment with the Montague amendment.

Mr. Washburn of Middleborough: Before I vote on the last substitute amendment offered by the gentleman from Brookline I want to ask him a question. He or his committee has amended the word "producing", a somewhat vague and indefinite term, because of course the thing produced may be the product of a farm or of a mine or the forest, as well as of a mill or a factory. In place of the word "producing" he has substituted the words "collecting", "converting". Bearing this in mind, I want to ask him when he rises to speak whether he conceives any distinction to exist between necessaries of life and the materials entering into the necessaries of life. For example, boots and shoes probably would be regarded as a necessity of life in a civilized community. Now, are the hides of cattle, which are converted into leather, and the leather which is converted into boots and shoes, necessaries of life within the meaning of his amendment? If so, of course we are face to face with the same problem of State socialism, it seems to me, that we had with the retention of the word "producing". Furthermore, Mr. President, I should like to ask him whether it would not be wise to join the words "collecting", "converting", by the conjunction "and", so as to harness them up. That would somewhat limit the scope of the provision and not make it quite as broad as it otherwise, it seems to me, would be.

Mr. Anderson of Brookline: Answering the question of the delegate from Middleborough, taking the last first, I accept the suggestion that after the word "collecting" the comma be struck out and the word "and" be inserted. The answer to the other question, as to whether hides could be bought and made into boots and shoes, is No. Without amplifying other reasons, if the gentleman will look at the enumeration of "markets, docks, fuel and coal yards, elevators, warehouses, canneries, slaughter-houses, and other *like* means," etc., it will by inclusion exclude manufactories as we ordinarily understand the word "manufactories". Essentially they are all marketing propositions, — collecting and converting means, as I apprehend, merely those *incidental* manufacturing processes which already have been explained as necessary in the case of milk.

Mr. Paul R. Blackmur of Quincy moved to amend the amendment offered by Mr. Anderson of Brookline by inserting after the word "warehouses", in the third from the last line, the words "cold storage plants"; and by inserting after the word "collecting", in the next line, the word "preserving".

Mr. Blackmur: I understand that that amendment is acceptable to the chairman of the committee, and if it be so I shall not offer any extended remarks regarding it. I should like to ask if that is acceptable to the chairman.

Mr. Anderson of Brookline: I accept the amendment as to cold storage plants. I have had an opportunity to talk with some of my committee and we all agreed that they were intended to be included under "warehouses and other like means." If there is any doubt about

it, put in the words. Personally I have no objection to the insertion of "preserving", but I am inclined to think that in the light of the delegate from Middleborough harnessing up "collecting" and "converting", "preserving" ought not to be put in; that it is better without it. But personally I have no objection to it.

Mr. BRACKETT of Arlington: Were I a member of the Legislature and a bill like that contemplated by this resolution were before it, I do not know whether I should support it or not. But what I wish again to call to the attention of the Convention, as others already have done, is the fact that we are not legislating. We simply are giving the Legislature the power to enact certain laws if it should deem it expedient. I believe in giving the Legislature very large powers. I have confidence in it. That is one reason why upon other questions which have been before the Convention I have differed from many of my friends here. I believe that we can reach satisfactory results through the Legislature of Massachusetts, and that one of the reasons why this Convention was called was in order to enlarge the powers of the Legislature, to enable it to do those things which the people want done and which an intelligent and matured public opinion approves of having done.

It might appear from the remarks of some gentlemen that the purpose of this resolution was to enable towns and cities to engage in mercantile business. That is not the object of this proposition at all. I feel authorized to speak of that object inasmuch as document No. 51, which was a resolution upon this subject, was introduced by me and referred to the committee on Public Affairs, and upon that and other resolutions referred to it the committee reported the resolution before us. My idea in presenting that resolution was not to promote doing business by towns and cities, but it was to provide a means of protecting the people of the Commonwealth against extortion. When a few capitalists get control of an article of necessity, wheat or flour or fuel, or some other article, and demand an exorbitant price for it, compelling the people to pay more than they ought to pay, then I believe that the Legislature should have the power to authorize the Governor, with the consent of the Council, to take such article by right of eminent domain, just as a man's land can be taken for a public purpose, take it, pay the owner what it is fairly worth, and then sell it to the towns and cities and to the inhabitants of the Commonwealth. My idea in inserting in the original resolution the clause authorizing towns and cities to buy the necessaries of life was to authorize them to buy, for sale to their inhabitants, the necessaries which the Commonwealth should be authorized to take and sell, as an economical means of enabling their inhabitants to procure the same. That is all this proposition means. It is to empower the Legislature to enact certain laws which in the near future we may find that the welfare of the Commonwealth demands.

Mr. MONTAGUE of Boston: After all that has been said and done it seems to me that this fact remains: That this Commonwealth has been going on in a very successful way for a great many years without having the benefit of either one of these propositions, but I am heartily in favor of the adoption of one of these resolutions as an emergency measure. It does seem to me that it would be well to adopt an emergency measure only, and then if it works well there would be

absolutely no trouble in putting through a constitutional amendment in the regular way to extend those powers, and if it proves to be beneficial and desirable I for one would be heartily in favor of extending those powers. But, Mr. President, I desire just a moment on my amendment, which is on the third page of the calendar and very short.

You remember that this proposition came in from the committee backed by practically the whole of them. It started off this way: "The General Court may" do so and so. The gentleman from Brookline (Mr. Anderson), the gentleman from Brockton (Mr. Brown) and others told us beautifully and eloquently, speaking as statesmen and with the words of truth and soberness, how much we could trust the Legislature, how wise and conservative the Legislature would be, and I think they told the truth. Now they come in with a substitute resolution. They have changed those words "The General Court", and it is "The Commonwealth", and the gentleman from Brookline tells us this morning that the reason they changed it was so as to allow this thing to be done by the initiative, and that is a mighty sight different matter; a very different matter. What would happen here, in point of fact, as one illustration? Suppose a man comes out as a candidate for mayor on this platform: That he will take over the milk supply of the city of Boston and sell it to-day to the inhabitants at 8 cents a quart. That would not go through the Legislature, but on the initiative it could be put through easily. Those signatures could be obtained, and when it went to the people of the Commonwealth as a whole, what would the people of Springfield, Fall River or any other city say about it? They would say: If Boston wants to do it well and good, just as Boston would say the same thing about Springfield and Fall River. And that thing would be adopted by the votes of the voters of the city of Boston. Do we want this thing done? I am pretty well satisfied that we could leave it to the discretion of the Legislature, but I am not satisfied to see that thing done by the initiative, and if this Convention should decide to adopt the proposition of the committee it seems to me that my amendment is absolutely necessary for the safety of the Commonwealth in that particular. [Applause.]

Mr. O'Connell of Boston: In the few minutes left, Mr. President, I wish briefly to call to the attention of the members of this Convention a singular and very successful piece of municipal activity which very seldom has come to the attention of the people of this part of the country. In the middle part of the last century the city of Cincinnati found that it was fast losing its leadership as the principal metropolis west of the Alleghany Mountains, due to the introduction of steam and the building of railroads which overlooked Cincinnati and reached out into different parts of the country and the far west in other directions. Cincinnati commenced to go into a decay and finally came to a standstill, and it generally was accepted that her days as a large metropolis were ended unless conditions could be changed. Private capital, on account of several financial panics, could not be interested in any extensive railroad building, particularly into that part of the country south of the Ohio River which was the natural feeding-ground for the city of Cincinnati. It then was conceived by some lawyers in Cincinnati that the city itself might be able to get a charter from the State of Ohio to build a railroad which would solve the problem, and although the idea of a city going into railroad building beyond the city

limits and into other States of the Union was unheard of, up to that time, nevertheless they succeeded in getting the charter. It authorized the city of Cincinnati to build a railroad 400 miles long, right into the bowels of the south, extending across the States of Kentucky and Tennessee, and as far as the city of Chattanooga. The railroad was financed and built, although a financial panic prevailed in this country during the time it was being constructed. It was known as the Cincinnati Southern Railroad. Subsequently it was leased by the trustees appointed by the city of Cincinnati, and now is known as the Cincinnati, New Orleans and Texas Pacific Railroad, and has been a splendid and remarkable success in railroad management and yields a large income to-day to the city of Cincinnati. The immediate result of the railroad upon the commercial interests of Cincinnati was to open up a wide area of new and undeveloped territory, besides providing quicker transportation and better shipping facilities, and placing freight rates on a more acceptable basis. Large sections of the south, from which heretofore Cincinnati had been entirely cut off, were brought thereby within railroad accommodation. In addition, a vast region, rich in lumber and mineral wealth, was directly penetrated. Manufacturing towns and mining settlements sprang up along the line of the road, and Chattanooga quickly grew from a small village to a very important city. In fact, access to all the south by means of railroad transportation was solved, and the present splendid facilities of Cincinnati made possible. The city once again began to grow and has kept on growing and developing. In these days when railroad facilities are notoriously inadequate and when we find our principal railroads unable to move the goods of the Nation or to distribute its products satisfactorily, when it is difficult to interest capital to provide the necessary equipment, and when the Nation finds itself unable to wait, we well may pause and ask ourselves whether the principle invoked by the city of Cincinnati should not be more commonly practiced. Instead of pessimism as to municipal management and governmental ownership of railroads and the necessities, such as has been manifested here in this hall by many members opposed to the present suggestion of the committee, I think we well may draw inspiration for faith in the doctrine that municipal activity properly safeguarded and managed can be practiced with great benefit to the community and with no harm to private enterprise.

Mr. CLAPP of Lexington: It should be made perfectly plain to you, if it has not been already, that none of these measures, none of these proposals reported by the delegate from Brookline on behalf of the committee on Public Affairs meets the unanimous approval of the members of the committee. I stated that the other day with respect to the form in which No. 318 was reported. Now, the committee has met again to-day, and as a result the chairman has reported the proposal in a modified form. I understand that seven out of the fifteen members attended that meeting. I personally was not among them; I was unable to go. I merely want to say that the revised form of the proposal comes no nearer satisfying me individually than did the original measure. I made it perfectly plain, I think, in what I said to the Convention the other day, that while I am willing to stand for this remedial legislation so far as coal and food-stuffs are concerned, I am unalterably opposed to broadening the scope of it so as to take in other

necessaries of life. As has been pointed out, that would include boots and shoes, and shirts, and things of that kind, so that the Legislature might permit cities and towns to enter into the dry-goods and grocery business in competition with private enterprises. To that I am unalterably opposed, and I think it would be a great mistake to remove the constitutional safeguard or limitation which now prevents that sort of thing being done. The amendments which I offered, and which are upon this calendar, do not narrow the scope of the committee's proposal as much as I think it should be narrowed; and I now ask unanimous consent to withdraw the amendments appearing upon the calendar under my name, and I wish to add that personally I shall support first of all the amendment offered by the delegate from Boston sitting in this division, and next the amendment offered by the delegate from Wellesley. I think that either one of those two amendments would result in putting this measure into reasonably satisfactory form and giving it all the breadth that any reasonable man can ask for.

Mr. Hobbs of Worcester: The amendments that have been offered to the measure and the discussion that has been had indicate pretty fairly the differences between the several gentlemen who are in favor of this proposition. There are two classes of amendments, those which would restrict, and also the amendment which is offered by the gentleman from Quincy (Mr. Adams), which designs to broaden it several degrees beyond the horizon. The main restrictions that are proposed are, first, limiting the proposition to the case of emergencies; second, cutting out the words "other necessaries of life." Those are the main restrictions. The first is exemplified in the amendment of the gentleman from Boston, Mr. Balch, and also in that of the gentleman from Boston, Mr. Curtis. They give the Legislature power to define in each case what an emergency shall be, but the first amendment provides a definite limit of two years during which the operations under this section shall be transacted. That, it seems to me, is very objectionable indeed. The Commonwealth ought not to be under any time limit in this matter. It ought to have the fullest power necessary to perform its transactions during such period as may be necessary. As to the restriction, — the cutting out the words "other necessaries of life", — it seems to me that there is very little danger in leaving this matter to the Legislature. I have been in favor of the broader power mainly because it is very hard for us in this day and generation to foretell just what emergencies lie ahead of us. We have been brought face to face within the last year with the possibilities that face a Commonwealth which does business at a distance from its base of supplies, depending upon the supply of its most ordinary necessaries of life on a system of railroads that may be disrupted by a strike or by a congestion of traffic, depending for its supply also upon a network of buyers and dealers which at any time may combine to exact an unreasonable toll. All of those situations we are facing. It has been claimed in Congress that we actually have been mulcted in large amounts beyond what is necessary for our ordinary supplies of life. Now, the ingress of the Commonwealth into this field may or may not assist. It is a chance, however, that it would pay us well to take. The Commonwealth, with its great credit, with its power of raising revenue beyond what private agencies have, may procure food where private sources could not do so; and we ought to equip it with these powers

because the emergencies that face us are not emergencies of any slight nature, but emergencies that may involve our very existence. For those reasons we should view this matter somewhat carefully. The Legislature is not likely to take any radical or ill-advised action in this matter. The great curse of our legislative system is not its proneness to radical action, but the ease, owing to the checks and balances of our Constitution, with which vigorous action, such as an emergency needs, is deferred, postponed or defeated. We do not need to fear radical action half as much as that the Legislature will fail to act radically enough to meet the emergency. From that point of view I think, then, that the less we tie the hands of the Legislature, the less we render it incapable of dealing with this subject in a broad and effective manner, the better off we shall be, and therefore I hope that we shall accept the broader amendment rather than any of the more restricted ones.

Messrs. Clapp of Lexington, Bigney of Boston, Quincy of Boston, Balch of Boston and George of Haverhill severally withdrew the pending amendments previously moved by them; Mr. Williams of Brookline withdrew one of the amendments previously moved by him.

Mr. ANDERSON of Brookline: As I understand the result of the withdrawals there is now nothing before the Convention except the report of the committee, slightly amended, to which I shall refer in a moment, and the amendments offered by the delegate from Wellesley (Mr. Pillsbury) printed this morning for use this afternoon in the middle of page 2, from which should be struck out the middle paragraph, which was a repetition. Perhaps what I stated is not quite accurate, for that at the bottom of page 2 of the reprint is an amendment offered by the gentleman from Wellesley to the amendment of the gentleman from Boston sitting next him (Mr. E. U. Curtis), those being, as I understand it, the only matters before the Convention at this time; unless perhaps there is one other exception, and that is the amendment offered by the delegate from Norwood (Mr. Willett) to be added at the end and providing for the use of uniform methods of accounting, and so forth. Without having authority from my full committee I may say that so far as I have had opportunity to consult with them we have no objection to the adoption of the amendment of the gentleman from Norwood, although we think it is a matter of legislation. It is a matter, however, of sufficiently important legislation, so that we are quite ready to defer to the views of those who think it should be in the fundamental act.

My attention is directed to the fact that the gentleman from Boston who spoke a few minutes ago (Mr. Montague) undertakes to put us back so that we could not get in under the initiative and referendum. I regard that as a part of the initiative and referendum campaign and not properly a part of this debate, and the committee is opposed to it. In whatever way law may be enacted, that law should be applicable to these provisions. I am indebted, however, to the delegate from Worcester sitting somewhere in the back of the hall (Mr. Tatman) for the suggestion that the language "The Commonwealth may by statute duly enacted" is not very happy language, and therefore I have made a new draft, taking his suggestion, "Provision may be made by law". That is purely formal, it adds nothing to the substance of the matter;

and I have here in typewriting one which when the matter is put I shall ask the Secretary to read as being to the best of my knowledge and belief the authorized recommendation of the committee, filing the caveat that I have not had opportunity to consult with *all* my committee; but, drawing fair inferences from their attitude hitherto, I have no doubt they will be content with that. We are content, as I already have said, to accept cold storage.

Now, Mr. President, the debate has divided itself into two general parts; one, wholesome, helpful criticism, and we have profited very much by that; and the other, a fearful, fearsome expression that the Legislature (which, when we are discussing the initiative and referendum, is so wise, so sound, so honest, so intelligent a body) may precipitate us into chaos and destroy the foundations of our liberty. The view of our committee, — and we have on that committee I do not know how many who have served in the Legislature, — is that there should be a broad scope of legislative power in this realm where needs are shown constantly to be arising. We have had during the past year or two more evidence of new needs for which there must be provided new measures than ever before in the history of the world. We submit to you, therefore, that the amendment of the gentleman from Wellesley limiting this merely to what he calls emergency legislation should not be enacted; that the provision of the committee provided not only for emergency legislation, which is the substance of the provision in the first part, but also for certain enlargement of power in the Commonwealth and the subdivisions thereof, — if and when the Legislature deems it wise, — is in the line of constructive, progressive statesmanship; that at least such a provision should be submitted to the people of the Commonwealth for their acceptance or their rejection.

All remaining pending amendments were rejected with the exception of the final new draft offered by Mr. George W. Anderson of Brookline, cited at the beginning of the chapter, which was substituted for the resolution reported by the committee (No. 318) and was ordered to a second reading as document No. 358.

Debate was continued Thursday, September 27, when the new draft (No. 358), had been read a second time.

Mr. Charles F. Dutch of Winchester moved certain amendments cited at the beginning of the chapter.

Mr. Dutch: First as to what the amendment is. It sounds far more complicated than it is. My intention is to add to the report of the committee as you have it before you this morning merely words which will confine authority there given to a time of public exigency. In order to do that it was necessary to make certain shiftings in the reading, which have thus sounded complicated. The preamble was put on, qualifying words that have been used by others, "when and so far as a public exigency exists therefor and while it continues". Then in order to tie all of the amendment into that qualifying clause it was necessary to transpose the sentence so as to enlarge the power of the General Court. No other change is intended, and so far as I know I have made no other change. In other words, I intend to bring up simply that one issue.

Yesterday we voted on various amendments. Every single amendment involved other changes. There was an amendment, for example,

that cut out the operation of the initiative, if we are to have a legislative initiative. I have made no such change. I leave that as it was, so that provision may be made by law in any way in which laws may be passed after the Constitution is amended as the result of this Convention. There was an amendment yesterday which cut out the words "other necessaries", and it may well be that it was defeated because of the fact that it cut out clothing and matters of that sort. Again, I avoid that issue. I make no change whatsoever in the matters covered by the committee's report. The Curtis amendment yesterday did some of these things and cut out purchasing by cities and towns. Again, that is not involved in this amendment. We leave that matter just as it was put in here by the committee. That amendment also put in the point of temporary shelter. That was not in the committee's report; therefore I have not put it in. That is left as it was. In other words, I have attempted to get before this Convention the straight, simple, clear issue as to whether we are going to adopt this proposition as an emergency proposition, a true emergency police power proposition, or whether we are going to adopt it in its present form as a plank of State socialism.

I made a motion to extend the time for debate because I could not conceive that this Convention had given all the consideration to this important matter which it deserved. I was impressed this morning when an ex-Governor (Mr. Walsh) remarked that this resolution was of far greater importance than the initiative and referendum, and I hope, after all the bickerings that we have had, this Convention can get down to real statecraft and really discuss this fundamental proposition.

Now, what is it? It was stated by another ex-Governor (Mr. Brackett) in the debate on this matter that we were not legislating; that we simply were giving authority, simply giving permission. But what does it mean? What do we do when we amend the Constitution? What do we do when we draft a Constitution? As I conceive it from the words of wise men, the Constitution is to set forth the framework of government, the machinery of government, and is to set forth fundamental policies of government. We put into the Constitution declarations of policies. They are considered fundamental policies, matters that are truly organic. Now, I say that in reading into the Constitution this proposal of the committee which has passed to this stage we are putting into the Constitution, if it is accepted, and we are recommending to put into the Constitution, a declaration that some of those who favor it have said flatly is to be the policy of this Commonwealth, that it may be proper for this State to engage as a regular business in State socialistic enterprises. I desire that this Convention go on record on that simple proposition: Shall we put into the Constitution of this old Commonwealth that plank? Shall we put into it that declaration in favor of State socialism, because that is what it is, or shall we so qualify this resolution that it shall become a matter purely of the exercise of the police power and confined to times of real emergency? That is the issue.

Mr. DONOVAN of Springfield: I should like to ask the gentleman if he will explain what he means by State socialism.

Mr. DUTCH: I would rather the member who asked the question should answer himself. What I mean in part is here: The authorizing of the Commonwealth and its political branches to engage in ordinary

business, — not public service enterprises but ordinary business, — as a matter of collective activity, and in place of, in substitution for, or in competition with, business conducted by private initiative.

Mr. Sullivan of Lawrence: I should like to ask the gentleman what the distinction is between the resolution before the Convention and the resolution as proposed to be amended by him, which makes the former a project of State socialism, and the latter not such.

Mr. Dutch: As I am advised, in addition to my own reading of the amendment as it is before us, it is not confined and is not intended to be confined to times of emergency. It is not intended to be confined to the times in which we now find ourselves. If it goes before the people, and if it is an emergency matter it ought to go before the people this fall, it will go before the people, as they understand it, as an emergency proposition, adapted to the present situation, and it will go before them therefore, as I believe, in a false light, because it is not so confined. The chairman of the committee reporting it expressly said he did not desire so to confine it. Now, I believe there is a very considerable difference, if not in kind most assuredly a tremendous difference in degree, between adopting that as a thoroughgoing, standing proposition of Massachusetts policy and adopting something which will permit taking care of the people in an emergency under the police power, perchance an emergency such as exists to-day. If it is not technically a difference in kind it certainly is a tremendous difference in degree as to what is granted.

Mr. Donovan of Lawrence: I should like to ask the gentleman in the first division to answer this. Yesterday I believe that most of the members of this Convention voted for the resolution that is now pending on second reading because they wished to put some check upon the rise in prices. I ask him this: Suppose that the ice dealers of the city of Lawrence, of whom there are only three, decide to get together and raise the price of ice in a time when there is no war; admitted that this resolution, if it passed as it is now, might stop that, how would we get that situation before the Legislature as an emergency?

Mr. Dutch: I am glad the question was asked, because it brings me sooner to that branch of my remarks. I am glad to answer it if I may. As I conceive it, as I was saying, the purpose of the chairman of this committee in presenting this thoroughgoing proposition, which will be in operation all the time, was to secure a means of combating possible monopoly, means of combating the very proposition which is suggested by the gentleman from Lawrence. Now, as I understand it, under the Constitution as it exists to-day it is entirely possible to proceed through the criminal law against such monopolies, against such improper combinations in restraint of trade. It certainly is possible under the Federal law, and I believe it can be worked out under our law, because, as I read history, that sort of control has been exercised for many hundreds of years under the Anglo-Saxon common law. There is precedent for attacking the raising of prices, there is precedent for the fixing of prices, and I am sure that the learned United States Attorney for this district can cite the old laws to that effect.

Mr. Donovan: Will the gentleman in the first division please recite for us how many men in this Commonwealth have been sent to jail or confined for raising prices?

Mr. Dutch: I cannot answer that question.

Mr. Donovan: Will the gentleman in the first division tell us how many have been prosecuted for raising prices in Massachusetts?

Mr. Dutch: I cannot answer that question. I do not believe that it is an argument for going into this sort of venture that machinery which we have may not have been applied. It is absolutely essential to have public opinion back of such prosecutions. When they are made properly they accomplish results. As I understand it, in the Federal government those prosecutions have been undertaken with considerable success. I believe the remedy there is entirely adequate. If there is abuse of the present system, that is no argument for kicking the system clear overboard. If there is abuse, because of private greed, of the system of private initiative and private business, it is no excuse for kicking that system overboard and embarking on a program of State distribution and production and conversion and whatever else is included or may be included under this platform.

Mr. Donovan of Springfield: I should like to ask the gentleman a question or questions that would make his amendment clearer to this Convention. I should like to ask if he provides in his amendment for the purchase from those individuals who now are engaged in the production and distribution of the necessaries of life. Does his amendment provide for the payment to them in case the Commonwealth desires to enter into the business during the term of the exigency, and in case it does go into the business temporarily does it mean that at the end of the exigency the Commonwealth shall return the property to those individuals who formerly were the owners of those producing and distributing stations? Does the Commonwealth return to the same persons from whom it buys? Does it resell to them in case it decides that the emergency has passed and that it is well that these former owners should return to business?

Mr. Dutch: I have made no change whatsoever in the operative features of this measure, and purposely, because I desire to bring before you simply this one issue. It was tied up with other issues yesterday. I cannot believe that if this issue is brought clearly before this Convention the result will be as it was yesterday, and that is why I have made no other change. The provisions here for eminent domain are exactly as they were brought in by the committee. The working out of the points that the gentleman has raised here will be entirely within the control of the Legislature or your initiative, as they were under the resolution as proposed.

Mr. Lomasney of Boston: May I ask the gentleman if it is not a fact that the district attorneys of the different counties are confined to their districts, — for instance, on the milk situation, if the district attorney of Suffolk starts proceedings, the minute he gets outside of Suffolk his authority ceases, and the same as to the district attorney of Essex, — and if legislation giving the Attorney-General the power to proceed in these cases was not defeated in the General Court?

Mr. Dutch: As I understand the situation there is nothing at all to interfere with the Attorney-General, as the law-officer of the Commonwealth, proceeding with such correlated prosecutions as he chooses and wherever he chooses.

Mr. Lomasney: I would inform the gentleman that the Attorney-General has ruled that he has not the power, and the Legislature refused to give him that power.

Mr. Dutch: My reply to that will be that there is nothing in the Constitution to prevent the Legislature from giving him that power, because it is perfectly clear that you can execute through this Commonwealth the criminal law of this Commonwealth as the Legislature or your initiative may desire to provide. Therefore, if that is a difficulty in your present system, remedy that difficulty but do not kick over the system. Do not commit us to something that you do not know anything about. I believe that we do not know anything about the working of State socialism in this democracy. Why, one of the greatest advocates of this proposition, the gentleman from Quincy (Mr. Adams), told you in so many words that we were not ready for this proposition. He knows that we have not built up a civil service, we have not built up a system of experts working for municipalities and for the political divisions of this Commonwealth who can carry out this sort of proposition. Your uniform accounting thing here is all right as far as it goes, but as somebody characterized it, when it was moved, it is only a fly speck; it is only a small part of the machinery, the governmental activity which is involved in this committee's report. So I simply desire to bring before you absolutely clearly, and my intention is without any other qualification, without altering any other thing in the amendment, the straight, flat issue whether you will confine this to a time of public exigency and emergency, a police power proposition, or whether you will put it into the Constitution, recommend it be put into our Constitution as a declaration which will go all over the world, to New Zealand and the rest, that we are prepared to accept State socialism and State business activities as a part of our governmental policy.

Now just one word of explanation of something that occurs to me. Of course it was difficult to phrase this matter of the public exigency and at the same time leave the initiative in here. If you had this law made simply by the General Court it would be a very easy matter to say that the General Court should determine when a public exigency existed. When you put in the initiative I must confess I do not know how to handle it. I do not know a great deal about that animal. I do not know how it will act in harness or hitched up tandem or any other way. If it can be phrased so that when there is a public exigency it can be determined in some ready fashion, I shall be delighted to accept the amendment. But what I think is the practical result is this: That we may rest, if the language is left as I have it, upon the general rules of construction, the general attitude of your Supreme Judicial Court, and that is that the finding of your legislative making body, — that will be either the General Court or the people, — as to the fact of the public exigency will not be disturbed by your court unless it is clearly, — clearly, — wrong, unless in a test it is shown that no reasonable people could come in good faith to that conclusion. Therefore I think this does not lead to litigation and may be left safely in this form; but if that particular can be perfected I shall be glad to accept it, because I wish to raise only a single issue.

Mr. Morrill of Haverhill: I am not afraid of this cry about socialism. In regard to the reference to court decisions, considerable time has been wasted by the last speaker on this proposition, because if he had but pursued his investigations a little further he would have ascertained that, if I remember correctly, about twenty-five years ago

the Massachusetts Supreme Judicial Court decided that it was unconstitutional for the Commonwealth or its subdivisions to go into business enterprises. But they said, in substance: "We are not clear of the ground on which we are basing this decision. We are basing it primarily on the fact that it has not been the custom for Massachusetts, except in the very early days of the Colonies, to go into business enterprises, and not having been the usual custom, why, we think it is unconstitutional to now adopt that custom." They did not say positively that it was unconstitutional primarily, but what they added to that was that in time of great public distress or emergency there absolutely was no doubt whatever that the State had the right, or its subdivisions had the right, to go into business enterprises, and that is all that the member in this division is now asking. In other words, he is asking us to take something which even the Supreme Judicial Court admits we already have. So what is the use of duplicating it? What we want is to give the Legislature power it does not now possess, or else we are wasting time, valuable time. We want to adjourn some time. I hope that without wasting any more time this proposition offered by the member in this division will be voted down and that we shall stand by the resolution as we did yesterday.

Mr. UNDERHILL of Somerville: I feel that the Convention has lost sight of one or two things relative to this measure. In 1903 we had a condition which very closely resembled this as far as the coal situation is concerned. There was a strike of the coal miners in Pennsylvania, and the price of coal in Massachusetts went up to something like $10 or $12 a ton, and it was impossible to obtain coal even at that price. The Legislature at that time thought the way to control prices was to license coal dealers. It is a very difficult matter when the public mind is inflamed, when the people are cold, when they are hungry, to point out some of the dangers to which they may fly in leaving the dangers which they have. There were a few men in the Legislature who dared to point out the trouble which would come from the licensing of the coal dealers, but there were too few of them, and this was the result which obtained under that licensing bill. At that time, through the north end, the west end and the south end in Boston, in fact in every large city of the Commonwealth where there was a congestion of population, there were hundreds of little stores, grocery stores; or they may have sold newspapers and periodicals; they may have been bootblack stands; they may have been, and were in some places, fruit stands, and where there were sheds or cellars connected, the small merchant also sold coal and delivered it in bags or baskets to the people in the congested localities, and they really were performing a service to the poor people in those communities. Now, when the license bill went through, every large coal dealer in Boston or any other city was able to pay the license fee, and did so, but almost all of these little establishments went out of business; they could not afford to pay the license fee. The consequence was that the coal business was thrown right into the hands of those who easily could monopolize it, and people who wanted coal and had no bins in which to put it were obliged to pay more for small quantities or had to send their children down to the wharf with their little carts or with their sleds and bring up a daily supply. Now, just the very thing the Legislature was attempting to avoid, it established, — a monopoly in the coal business.

There is not a man in this Convention, no matter where he lives, but who may bring to his mind some little store in his community that is doing a great service to that community. It is giving an income, perhaps to some old man beyond the age when he can go out and labor hard, perhaps to some widow, or perhaps to some young man who is trying to start in business. Then there are larger establishments which employ one, two, or three clerks or salesmen. The proprietors pay good wages and have a personal interest in their employees. Now, what are you going to do to them? Those people will be unable to compete with the State in the distribution of merchandise, — absolutely unable to do so. They will have to go out of business. But you will find that the State cannot compete efficiently with the great combinations of capital. I do not care whether it is in the grocery business, the coal business, the ice business, the dry-goods business, the drug business or any other business.

Mr. James H. Brennan of Boston: I should like to ask the gentleman from Somerville, in connection with his own argument, if the same person, whether she be a widow or whether he be a man who has reached that age where he cannot labor any longer, starts a little store to-day, and one of the chain stores, so called, comes along and competes with him or her, if to-day she or he has not got to get out of the business, and if this is an argument really against this proposition.

Mr. Underhill: The gentleman is very nearly, if not entirely, correct. I think that the chain stores, so called, have proved that they are able to undersell the smaller stores. They buy in enormous quantities, they give no credit, they substitute goods frequently, they pay the lowest possible wage to their employees, — and I want him to take that into consideration, — and consequently they can undersell the little store. Now, sir, to go back to the coal business. In the coal business at that time, and I know, because I previously had graduated from a coal team, they paid their men from $7 to $9 a week for driving a single or a double team, and they worked ten and twelve hours a day. Now all of the coal teamsters, in Boston at least, are organized and the lowest I think any of them gets is $16 a week, and none of them works over eight hours a day.

Mr. Mahoney of Boston: I should like to have the gentleman state when they ever paid teamsters $9 and $10 a week for driving a coal team in the city of Somerville, or Charlestown, or Boston.

Mr. Underhill: I drove a coal team for a living for four years. I started in with a light team. I got $5 a week for driving that light team. It was true I was only fourteen years of age. At fifteen I was promoted to a heavy team, and I got $7 a week, and I drove that team for three years. When I was trusted at the age of eighteen with a double team, I was paid $9 a week, and I was paid as much as any of the other men working who were older than I was.

Mr. Mahoney: I should like to ask the gentleman how many years ago that was.

Mr. Underhill: I have some gray hairs (those I have left) but, sir, I do not think I look so old or decrepit that the gentleman might not figure back, and realize that it was not so very long ago, and I am sure it is not so long ago but I still remember the backaches from shoveling coal and the cold winter days driving team.

Mr. Donovan of Lawrence: I should like the member in the fourth

division to explain a little further on this monopoly matter. Even admitting that there may have been a monopoly in the coal business, was it not a private monopoly? And if it should come about that there would be a monopoly following this amendment would it not be a public monopoly, which the public would own, regulating and protecting the price of necessities from rising?

Mr. UNDERHILL: I do not believe there is any difference in cost to the people between a public monopoly and a private monopoly. A private monopoly perhaps may be more heartless than a public monopoly, but the public monopoly is more arbitrary and taxes and takes from the pockets of the people capital to compete with those same people and waste money in any line of business in which the public monopoly may choose to experiment.

Just stop to think, gentlemen. Massachusetts has no natural resources. Coal is mined in Pennsylvania, Virginia, West Virginia, and Ohio. If Massachusetts had to depend upon the food supply raised within her own borders, all of the inhabitants would starve to death in less than a month. The food supply comes from the outside. I do not believe a hundred pounds of wool are raised on the hills of Massachusetts to-day, and for the clothing that we wear, or the goods which go into the production of the cloth, we have to depend upon outside production. What have we got here in Massachusetts? We have thousands and thousands of industrious people who are working in our mills and factories, in our shops and stores, in our great educational institutions, and, if you please, on our recreational coast-line during the summer. We have thousands of traveling salesmen, and small dealers in every branch of trade. We have thousands of young men who are starting in as clerks and as salesmen and eventually will become the merchants and manufacturers of Massachusetts. Pennsylvania places a tax of ten cents a ton on every ton of anthracite coal mined within its borders, shipped outside the State, and Massachusetts has to pay. It has nothing to do with the legislation of Massachusetts, and Massachusetts cannot pass a law that will take off that tax of ten cents. There is a question now whether the coal miners in Pennsylvania and in other coal districts will strike or not. What has Massachusetts got to do with that strike? Can she stop it? No, she cannot. There are strikes all through the great western States, where they produce foodstuffs. Word has gone out, or did go out, to burn the fields of the harvest. Could Massachusetts stop that? She could not. But Massachusetts can, if she will, establish textile and trade-schools, and by providing further opportunities which she can give her young men she will prevent those young men from being handicapped in going into business for themselves and improving their condition. But if she puts this amendment in the Constitution and becomes a competitor of those young men she says to them: "You shall work for me, you shall work for me in the capacity of a slave." (That is the way some labor men always express it when a man has to work for somebody else.) "You shall work for me and I shall pay you what I please; and if you get power enough later on, and organize and go to the Legislature and get your pay raised, and then get a pension, why, you have a pretty soft job, and you ought to be contented with it." But, sir, there are men in Massachusetts who will not be content with any such situation. They do not want a public job. They want a chance to build for them-

selves. They want a chance, and I do not believe any man in Massachusetts would refuse a chance to make a Carnegie or a Rockefeller of himself. Now I want you to look at this thing seriously and not be carried away by the exigencies of the present abnormal conditions. I am suffering just as much as any of you. I probably have as large a family as most of you have, to support and to educate. I feel the pinch just as hard as any of you. But I do not forget, if you please, that it is not a usual condition which exists, and do not you forget that if you ever give the city of Boston and other cities, — and I will not except the city of Lawrence, — if you ever give cities a chance to go into the coal or grocery business I want to go back to driving team, because it will be the softest job ever made for a man in Massachusetts. [Laughter and applause.]

Mr. CUSICK of Boston: It is with a good deal of reluctance that I speak upon this measure. The reason, which I admit frankly, is that I am counsel for men who deal in food-stuffs. I want you to consider that. At the same time, I want to get you to consider my point of view on this measure.

Do you know that in this amendment you have given to the General Court of the Commonwealth the most drastic power that is given by any Constitution of any State in this Union? That in itself, if it is a fact, should be a sufficient reason for you to consider carefully the effect of this measure, and not be influenced by conditions which all of us admit are bad but which the purpose of this amendment will never correct. Everyone of us knows the condition that exists not only in Massachusetts, but all over this great country to-day in regard to the high price of food-stuffs. It is not a condition that is local to Massachusetts. No other condition could exist when the United States of America has been for three years trying to feed all the European countries as well as the United States. And when the delegate in the second division (Mr. Anderson of Brookline), the proponent of this measure, very unctuously remarked when he opened this debate that the United States was to-day the greatest corporation of the world, why did he not tell you the whole truth? Why did he not say that that power was simply a war power, and is expressly stated as such in the statute creating the power, and not leave it to be inferred that such was a reason why the Commonwealth of Massachusetts should approve the principles of this amendment?

What does this measure mean? Does it mean municipal ownership? No, it does not. Does it mean that the Commonwealth may take the business of a concern which is dealing in food-stuff, and pay for it? It does not. This measure means, and means nothing more than that, that the Commonwealth shall enter into competition with the private individuals and corporations who to-day are engaged in the production, the sale and distribution of food-stuffs. Now, what does that mean? That means that you destroy the individual initiative of men who have spent perhaps the greater number of their years in building up a business, and you do not pay them for it. You destroy it by indirection.

For instance, let me illustrate. A lot has been said here about the milk business. The proponent of this measure knows the milk business. He has been investigating it for a number of years. He has to-day in his office certain evidence in regard to some of the factors of the

milk business. I know, and you know, that if that milk business in Massachusetts had been conducted illegally he would not wait until this time to prosecute it. Now let me tell you about the milk business. One concern has been producing and distributing milk in the towns and cities of greater Boston for sixty years. Up to fifteen years ago its business consisted of bringing milk in from the country and selling it here to peddlers, with no handling whatsoever, the peddler taking it to the consumer and distributing it. The economic condition was such that the peddler could not do it, because the laws of this Commonwealth require the treatment of milk before it is sold. To-day from this concern that supplies perhaps two-fifths or more of all the milk of greater Boston not one single drop of milk goes to any consumer until it is pasteurized and absolutely free from disease of any character, regardless of whether it goes down to the slums of the north or west ends or to the Back Bay of Boston; and, furthermore, when that milk comes in on the cars from the country and goes to the plants, where there are hundreds of thousands of dollars worth of machinery, no human person gets near that milk or comes in contact with it until it is opened in your kitchens for consumption. These people are not middlemen. For sixty years they have spent hundreds of thousands of dollars in developing that business. My friend here in the first division was telling you about the coal business. That is a matter of merchandising. If there are factors between the producer and the consumer that are unnecessary in the coal business it is one thing; but there is no factor between the producer and the consumer in the milk business, and therefore the thing that troubles the member in the first division is one of "merchandising", an economic proposition, which this amendment does not solve.

Mr. WILLETT of Norwood: I should like to ask, Mr. President, through you, a question of this gentleman regarding the merchandising of coal. From my knowledge of the coal business, — and we buy considerable amounts of coal for different communities in which our plants are situated, — I find that the greatest factor in the cost of coal as it is handled to-day is the competition that comes from the men who sell coal in different communities, competing with each other for coal. Now, would not the collective buying, which would be possible through the Commonwealth or the cities or towns in the Commonwealth and thereby removing competition with ourselves in buying from the mines, be a very potent factor in the merchandising of coal, and would it not relieve Massachusetts as a whole from profits which are paid to middlemen? The abnormal price as now made is a premium for deliveries over the actual cost at the mine.

Mr. CUSICK: The question of merchandising is purely an economic question, and is not a political one. We do not have to go any further than the suburbs of any city. We go out there and we find a butcher's shop here, a grocery store there, a butter store there. They all are dealing in many of the same articles. Now, there is no way to stop that, but there is no question that that is an economic loss. There is no question that the thing some time has got to be met, but it is not going to be met by such an amendment as this, because it is purely and simply an economic question. The point I desire to make is this: In the good-will, trade and custom of the business conducted by the individual or the corporation is a valuable property right. Now, if the

Commonwealth wants to go in and do that business, if it took that business and paid a reasonable compensation for it that at least would be honest. On the other hand, you simply provide that the Commonwealth may compete, and nothing in this amendment (please remember this, consider it, examine it and see if I am not stating what is true) nothing in this amendment provides for the taking of any business. Now, are you going to be dishonest with your own citizens? The minute a municipal plant for the selling or distribution of food-stuffs in many lines is set up, even if that plant does not exist but three months, a great property right has been lost to the individual who makes it possible for the municipality or the Commonwealth to engage in this business. It does not require any argument of mine to convince any thoughtful man in this body that private business cannot compete with municipal business or business conducted by the Commonwealth. The factors are entirely different in both cases. In the one case you have the individual initiative supplied by individual capital, and they must make an increment on their capital through their operation; when business is carried on by the State or municipality your capital is obtained by *taxation;* you have the whole people to fall back on, in order to make up any deficit that is necessary, through taxes, and it is an entirely different proposition.

Mr. ANDERSON of Brookline: I want to be sure that I got the gentleman's argument. As I understood him, he argued against the latter part of the proposition, — and let him correct me if I do not state him correctly, — which authorizes the Commonwealth, if the Legislature grants the power, or the cities and towns, to establish and maintain markets, docks, fuel and coal yards, elevators, canneries and other like means of distribution, which I have especially stated might contemplate a milk distribution station, and he has stated frankly that he is counsel for one of the milk distributors. Now, I want to see whether or not the gist of his argument is that there should be a provision in the Constitution, — mind you, not in a statute similar to the present statutory provision, — to the effect that you shall not set up a municipal gas company unless and until you take and pay for the existing gas company. In other words, is his proposition that there shall be no State or municipal cannery or slaughter-house or cold storage plant or milk distribution station or ice distribution station unless and until, under the Constitution, all the existing plants of that kind that want to have themselves taken and paid for are taken and paid for out of the treasury of the Commonwealth or of the municipality which undertakes to extend the facilities for the collection, preservation and distribution of the necessaries of life?

Mr. CUSICK: I do not think there is any need for me to answer that. The gentleman knows it very well. If he does not, I will restate it. There is nothing in the resolution which he has proposed here that gives the Legislature the power to take and pay for an existing business dealing in food-stuffs, and he must know that fact. Now, as far as the Legislature is concerned, if the Legislature does not get that power from the amendment to the Constitution it cannot exercise it.

Mr. ANDERSON: Seriously I ask this question. If it be a constitutional right for the Commonwealth, either as a State or to authorize a municipality, to go into any of these lines of canneries, slaughter-

houses, milk distribution, etc., does it not necessarily follow as matter of law, ordinary law, without any express grant in the Constitution, that they may take by eminent domain any existing land or facilities, including all the business of your plants?

Mr. CUSICK: No.

Mr. ANDERSON: Pardon me. And use those facilities? In other words, if the gentleman's proposition is a serious proposition, that the Commonwealth would be without power if it went into the milk distribution business in Boston or in metropolitan Boston to take and pay for, if the Legislature thought that was wise, all or any part of the machinery of his present plant, I am frank to say I should be heartily in favor of granting that constitutional power, and would assent instantly to a proper amendment; for it is perfectly clear that the Legislature ought to be empowered when it goes into any of these businesses to take and pay for any plants that ought to be taken and paid for either to facilitate the public business or in justice to any existing business.

Mr. CUSICK: Nowhere in this resolution is there any description of business or is the word business used. A business consists of more than the actual physical property used in the sale of a commodity. Attached to such property is a good-will, trade and custom, which is a property right and sometimes more valuable than the physical property. My contention is, — I may be wrong, I have tried here to ascertain the fact, but I believe I am right, — my contention is that this power gives the Legislature the right to authorize only the taking by purchase or otherwise of certain food-stuffs, feeds, fuel, ice, etc.; it does not give them the right to take an existing business, and my opinion is that the minute such a proposition appeared in the Legislature that point would be raised by the legislators. In other words, you may destroy a business by indirection and competition. If the gentleman would not do that then why not make it plainer and give the Legislature the right to take the business as well as to buy and sell food-stuffs, fuel, etc.?

Mr. ANDERSON: I will say to the gentleman, and it may shorten the discussion here, that if he will show me any authority or see me outside the Convention and indicate that there is any reasonable doubt under this proposed amendment of the Constitution of the power of the Legislature to authorize the taking and the paying for any existing plant, I will sit down with him and work out such amendment to this resolution, and undertake to get the assent of my committee, as will put it beyond reasonable doubt.

Mr. CUSICK: I thank the gentleman for his courtesy in this matter, but now I am referring the matter to the consideration of this Convention. I shall be glad if I can have an opportunity to take it up. The gentleman asked me if I could furnish any authority. No. As I said before, no Legislature in any State of this Union has this power, as far as I have been able to find it, and I have tried to have it verified by the commission that was appointed by the Governor to get out these bulletins, and after conference I think I can say truthfully that you are now embarking on an undertaking and giving a power to the Legislature that is had by no other Legislature in this Union. Therefore of course there cannot be any authority on that specific point. But I do not think there is much doubt that a careful reading

of this measure shows definitely what it is, in other words, the right for the Commonwealth, town or municipality to compete with individuals in the line of buying and selling food-stuffs, and to that end they may, if necessary, be authorized to establish, build if you will, then maintain the different plants, whether it be wharves or coal-yards or cold storage plants, that are necessary to do what, — to buy and sell food-stuffs. But this resolution nowhere authorizes the Legislature, by express words, to reimburse the individual for the loss through destruction of his business by competition with the State. And this method would be the only method that would be practical to the State in most cases.

Mr. Broderick of Waltham: The gentleman's opposition to this proposal is based chiefly on the ground that if it is adopted certain property rights of the individual will not be protected. Now, I wish to ask the gentleman what chance or hope the individual has now to protect such property rights as against the power of great combinations of capital, whenever that power may be unscrupulously or unjustly exercised?

Mr. Cusick: I do not think that it would be of any benefit to go into that question at length but I will tell you, sir, you have got a mighty able representative of the United States government here who proposed this resolution and who has been investigating such matters as you referred to for a long time. I believe if he had found that there had been any violation of law he would have prosecuted. I want to call the attention of this Convention to the fact that there is plenty of law on the statute-books to-day in this Commonwealth that gives every opportunity to prevent a monopoly in the necessaries of life. Apart from the common law there have been passed in 1908, 1912, 1913 and in other years, statutes which cover points in regard to monopolies, restraints of trade, unlawful competition, and combinations of trade intrastate. As far as interstate matters are concerned it is within the knowledge of you all that the United States government, certainly under some administrations, has made some successful prosecutions under the Sherman Act.

Now, Mr. President and fellow-delegates, let me state what I think would be right, and I do not think there is a great difference between us as to a proper remedy. I believe a law of this character, limited to times of war or public emergency, would meet the situation; but, I will go still further and say to you that I would define times of public emergency to include such a condition of distress as might be brought about in consequence of the control of the production, sale or distribution of food-stuffs by any individual or corporation which results in a detriment to the public, and, therefore, against public welfare. In other words, I would limit the principles of this resolution to times of war, public emergencies, or when necessary for the public welfare. That would give to every person in this Commonwealth the protection which is necessary under the law; would meet the approval of every honest man and would put an end to the socialistic dogma which seeks to have the Commonwealth engaged in business which in itself will destroy individual initiative in business affairs.

Mr. Josiah Quincy of Boston offered certain amendments to the new draft (No. 358) cited at the beginning of the chapter.

Mr. Quincy: It has seemed to me that the wording of the first two lines of this amendment left it in grave doubt whether the intention of the committee was carried out. I have no doubt that the committee intends to give full power to the Commonwealth to contract for or to purchase outside the State any of the articles here enumerated, but I am afraid, and I find that other members upon this floor are afraid, that the use of the words "take by purchase or otherwise" leaves it in doubt, as those words apply peculiarly within the jurisdiction of the Commonwealth itself, the Commonwealth having no power to take by eminent domain outside of its own limits. Of course that raises at least a serious doubt whether it is the intention of this amendment to give the full power to the Commonwealth to go outside the State, where it has no power to "take" in the legal sense, and to arrange for the purchase by contract or otherwise of coal and other articles of necessity. I take it the chairman of the committee will be prepared to say that that is a proper amendment to clear up that vitally important matter.

The next change is purely a verbal one, to correspond with the new construction of the sentence which is made necessary.

The addition of the words "preserving and storing" after the word "converting", in line 19, seems to be necessary to provide for carrying out fully the plain intent of the powers proposed to be given.

Now, as I am on my feet, I should like to say just a word about the amendment offered by the gentleman from Winchester (Mr. Dutch). In the first place, he stated to us that his amendment made no change whatever, as he understood it, except to make this authority subject to the new clause "when and so far as a public exigency exists, and so long as it continues"; but in the necessary change in the construction of the resolution he has made, perhaps inadvertently, what seems to me an important change in respect to the powers of the Governor and Council. As the resolution stands those powers could be exercised until otherwise provided by legislation, and these words were purposely used, whereas under the gentleman's amendment the powers of the Governor and Council would cease automatically the moment the Legislature assembled. Under the resolution as it stands they would continue until the Legislature acts, and the months of January and February quite conceivably may be important months for the exercise of powers under this proposed amendment.

But it seems to me, Mr. President, that the important question which is suggested by the resolution of the gentleman from Winchester is this: Are we, in voting upon this amendment, committing ourselves, any one of us, upon the policy or expediency of passing legislation exercising any of these powers? I want to say for myself that I do not consider that in voting for this amendment I am voting in favor of the exercise by the Legislature of any one of those powers. I am not voting upon the question of policy, except to the extent of saying that it is sound policy for this Convention to untie the hands of the Legislature, to remove the restrictions which now prevent the Legislature from passing legislation of this character. I do not understand that I or the other gentlemen who vote for this resolution are saying how we would vote as members of the Legislature upon any proposal to exercise all or any of the powers that are included in this amendment.

Mr. Edwin U. Curtis of Boston: Yesterday when my amendment

was rejected, I thought some gentlemen present did not understand it. Now, I see that the gentleman from Boston has used words that were in my amendment, namely, the provision for temporary shelter. I hope he will go home to-night and think over carefully two or three other matters I suggested. That resolution is now confined to the necessaries of life. Now, gentlemen, who is to decide what are the necessaries of life? If you want to do business here, and wish to allow the State to do business, do not use doubtful language that later must be interpreted by the Supreme Judicial Court.

The gentleman who has just filed these amendments has been mayor of Boston. He knows the great city. He knows that some of us are unfortunate enough to hold real estate here. Not large holdings, perhaps, but a lot of small holdings. Mechanics and workmen have their little houses with mortgages on them. When we adopt this socialistic idea of having the State go into a business which it cannot run at a profit and go into competition with private concerns, the man who owns a little real estate is going to suffer, because he must pay the taxes. He cannot take up his real estate and run down to Providence or some other place. Those who have invested in stocks or bonds can leave when they wish, but they must stay and pay the bills. I think you should consider the matter seriously before you make this State purely socialistic, as this resolution provides. We should give this authority for the existing emergency, — the war, — and there we should stop.

Here is another thing for the gentleman from Boston to think over to-night. If the State finds itself loaded down with goods which it cannot sell to its citizens because the goods cost too much, authority to sell to citizens of other States should be granted.

Again, I say, you should pause before you plunge this State for all time into purely socialistic undertakings. The committee says: "Come in at any time and stay forever." I say: "Come in when it becomes necessary and stay as long as is necessary."

If the student from Boston in the second division will consider what I have said, I believe he will offer more perfecting amendments and eventually will have my amendment which was defeated yesterday.

Mr. James P. Richardson of Newton moved certain amendments to the new draft (No. 358) cited at the beginning of the chapter.

Debate was resumed Friday, September 28.

Mr. Richardson of Newton: The amendment which I have offered this morning is a simple one and would provide only for the application of the principles of the civil service system to any positions which may be created if the provisions of this suggested amendment to the Constitution shall be adopted. In other words, it is to take this experimental work of the Commonwealth, if we are to go into it, out of politics so far as that can be done.

I do not propose to spend any time in arguing the merits of that proposition, because I believe it will appeal to the members of this Convention and because I venture to think that the proponents of the resolution will accept it and approve of it.

I now wish to say a few words, Mr. President, upon the amendment which I offered yesterday and which is printed under my name in this calendar. The purpose of that amendment is simple and

plain and easily understood. It presents a definite point which never yet has been considered by itself and separately. The whole purpose of that amendment is to limit the operation of the proposed measure to dealing by the Commonwealth and its municipalities in such articles as are comprised under the head of food-stuffs, feeds, fuel and ice, and to take out of the proposed article the words "other necessaries of life."

Now there are three reasons which I want to give why I think that that amendment ought to be adopted, and the first is this: I think that the field to be occupied by the Commonwealth in taking up this experimental method of State coöperation or State socialism or whatever you may be pleased to call it, should be limited and definite. Now if you will confine the operation of the amendment to food-stuffs, feeds, fuel and ice, you embrace a field which is logical, comprehensive, definite and at the same time reasonably limited. There is a field within which the amendment can operate with some certainty as to what matters are to be affected and what matters are not to be affected. If you gentlemen who are business men are going to adopt a new system in your business of any sort, — if you gentlemen who are school-men are going to adopt a new principle or method of instruction in the departments of your school, — you do not put it in at the first blush all over the plant; you try it out here and there and see how it works.

Everybody in the Convention admits that this is an important parting of the ways; that it is a new thing in this Commonwealth which is proposed. If we are to try it, let us try it in a businesslike and common-sense way, and let us not spread it all over the possible field of business enterprise until we know how it works with reference to some things upon which you can put your finger. That is the first reason why I urge the limitation of this measure to the dealing in food-stuffs, feeds, fuel and ice.

The second reason is because I believe the language of the amendment as it stands at present is open to the indictment of looseness, vagueness and obscurity. In other words, what is a necessity or a necessary of life? That definition has been changing constantly in the last fifty years. Many things are considered necessaries of life to-day which were not in that category a half century ago or even a less space of time. Many things are considered necessaries of life in the metropolitan communities to-day which are not in that category back in the hills or in the country. Moreover, every lawyer knows how many times the words "necessaries of life" come before the courts for construction and interpretation. I need to mention only such matters as the liability of minors for necessaries of life and the operation of what is known as the Dubuque law to show you how uncertain the definition of the phrase "necessaries of life" is and how much opportunity exists for litigation under the language of the amendment as it now stands. It seems to me, Mr. President, that the committee in charge really does not have in mind the extension of the field of this measure beyond the words which I would leave in it, because the sentence at the end of the resolution, which defines the instrumentalities which the Commonwealth may take and operate, relates only to such instrumentalities as would be useful in dealing with food-stuffs, feeds, fuel and ice, to wit, "markets, docks, fuel and coal-yards, etc." (not to weary you

with reading it), all relating to food-stuffs, feeds, fuel and ice. And therefore it seems to me that the purpose of the proponents of this resolution will be carried out as fully as it ought to be carried out if the words "and other necessaries of life", which are indefinite and vague, and no one knows what they mean or can know until the Supreme Judicial Court takes the last guess at them, should be stricken out of that resolution.

But the third reason perhaps may be said to embrace a little of the other reasons and, it seems to me, is the most important of all. If you limit the operation of the amendment to food-stuffs, feeds, fuel and ice, you cover only a field in which are embraced none of the basic industries of this Commonwealth. Now who shall say, Mr. President, that the lumber industry, the cotton and woolen goods industry and the leather industry in all its various forms may not be considered (or ought to be considered) as necessaries of life? And if the operation of this amendment is to be extended to cover those great industries, which are the basic industries of Massachusetts, and on which her industrial prosperity absolutely depends, you will have established or at least authorized State competition with your own basic industries; whereas if the operation of the amendment is limited to these definite things to which I keep referring, you will have limited it to matters which are produced principally outside the boundaries of this State and in respect to which it is at least conceivable that the argument yesterday of the gentleman from Norwood (Mr. Willett) with regard to the power of collective buying may apply, and that the amendment may be of benefit to the inhabitants of this Commonwealth. But I cannot conceive that it is good government to empower the State as an instrument of government to go into business in competition with the basic industries of the State. That is going further than public ownership, because it is creating not a constructive but a destructive force, and I never have heard that principle seriously urged before. I really do not believe that that is what is in the minds of the committee now.

For those three reasons, then, gentlemen, I urge the serious consideration of this amendment by the Convention. It certainly is true that unless we do so limit it there will be both a continual and a continuous strain, in the halls of the Legislature and by the operation of the initiative petition, if that is to apply to these matters, to bring within the purview of this amendment matters which ought not to belong there; in other words, to stretch it constantly and make it occupy a larger field than that which it ought to occupy and that which will be occupied if the language is at once definite, comprehensive and logical, as I believe would be the case if the words "other necessaries of life" were stricken out wherever they appear.

Mr. BAUER of Lynn: In approaching the matter set forth by Mr. Anderson of Brookline as chairman of his committee I at first approached it from the standpoint of a retail merchant, as I am a fairly successful retail merchant, and I was absolutely opposed to the proposition as being one that interfered too seriously with private business privileges. But as I looked at the matter from a community standpoint and analyzed it in every far-reaching way that I could, my opinions changed so that instead of being opposed to it they were absolutely in favor of it. I regard the proposed amendments as being

unfriendly amendments to the very fundamentals of the original propositions as reported by the committee, because they are restrictive amendments. They are meant to be restrictive amendments. The movers of those amendments utterly fail to see and to appreciate the fact that our Constitution, whatever it may be, eventually will have to be broad enough to permit the Legislature of this State to do anything that speaks for the economics and the contentment of our whole people, without restrictions and without qualifications. There is no doubt about that fact to my mind. That is what we are coming to and that is what we ought to come to. Business operation and business systems after this international war, in my judgment, will be on an entirely different plane from anything we have known before. I believe the people will not be satisfied to let the United States government relinquish its control of the coal supply or the operation of our National railroads. I believe they will be satisfied with nothing less than absolute government ownership of those two great factors in our every-day life. And I believe, Mr. President, that if we are to do anything in the way of improving our Constitution we should improve it along lines that will permit, as I have just said, our Legislature to do those things that speak for the economics and contentment of our whole people, no matter whose tree they may bark.

It has been said by some of the advocates of these amendments that there would be no remuneration for the private loss sustained if the State or any of its political factors should go into this business of dealing in public necessities. I wish to call to their attention the fact that when the Commonwealth of Massachusetts first chartered our railroads and made that great progress possible in the transportation field, there was no consideration for the hundreds of thousands of dollars invested in stage-coaches and private toll roads that had to be thrown on the scrap-heap because of the march of progress; and there is no reason in my mind why there should be any consideration for a moment of the individual injuries when weighed in the balance against an entire community benefit.

The gentleman in the fourth division, Mr. Underhill of Somerville, said yesterday that there was very little difference between public owned monopoly and private owned monopoly. It is a statement that could not be made by a man who has any understanding at all of either of those factors. Private owned monopoly, as everyone here knows, is run for the primary purpose of paying a profit to its stockholders, while public owned monopoly, as everyone knows, is run for the primary purpose of giving a service back to the whole people as economically as possible. They cannot be debated on the same lines, they are so opposed to each other. To illustrate: It was only a few years ago that Newton D. Baker, then mayor of Cleveland, Ohio, had a situation confronting him very much such as exists in the city of Boston to-day. The electric light company in his city had a monopoly of the entire public electricity producing business in Cleveland, the same as the Edison Electric Illuminating Company has a monopoly of the entire business here; and he made up his mind that he would establish a publicly owned electric plant for the production of light and power in that city. And so they went to the Legislature and got permission to issue $1,250,000 in bonds, to be retired in 20 years, to build such a plant. At that time the rate to the householder in Cleveland was ten

cents a kilowatt hour, the same as it is in Boston for household electricity. They built the plant and, after setting aside a sum equal to the taxes on the plant as if it had been privately owned, setting aside a sum to retire its bonds, to take care of its maintenance, to take care of its depreciation, they were able to sell electricity to every householder in Cleveland at three cents per kilowatt hour with a minimum charge of fifty cents a month. Many of the households there do not even use the minimum charge because the rate is so low. The city was able to produce electricity for the electric railway companies so much cheaper than the electric railway companies could produce it for themselves that the railway companies have abandoned all electrical plants of their own and take electricity from the municipal plant.

That shows, Mr. President, that government control of public necessities is not an expensive matter; it speaks for the economies of the whole people. It removes absolutely from the consumer the necessity of paying to the company large annual amounts that are spent every year by our public service corporations for the sake of shaping up Legislatures, shaping up city governments, shaping up town governments, in order that the corporations may be benefited. There is spent in this Commonwealth every year $500,000 of the funds of public utilities, that are paid for ultimately by the consumer, for the immoral political practices that prevail in this State as exemplified through the office of "Jake" Wardwell and "Charlie" Innes. There is no doubt about that.

Mr. ADAMS of Concord: Do you include in those public utilities the Boston Edison, the Boston Consolidated Gas and the Bay State Street Railway Company?

Mr. BAUER: Absolutely, yes.

Mr. ADAMS: Then I rise to a question of privilege.

The PRESIDENT: Mr. Adams of Concord has the floor.

Mr. ADAMS: I am a director in those three companies, the Bay State Street Railway Company, the Edison Electric Illuminating Company of Boston and the Boston Consolidated Gas Company; and I know as far as one can know what goes on in those companies, and I want to say that not one cent is spent by those companies in any way to influence the election of any State officer or any member of the Legislature, in any way improper or contrary to the laws of this Commonwealth.

Mr. BAUER: In answer to that I wish to refer the gentleman who has just spoken to the testimony of "Jake" Wardwell before our Board of Gas and Electric Light Commissioners this winter, where he testified that the Boston Edison Company had paid him a retainer of $50,000 a year to use as he well knows how, and testified under oath.

Mr. ADAMS: Mr. Wardwell is paid a salary by the Edison Company, but not with any direct or indirect intention that the salary shall be paid for any improper purpose or for anything except his own uses.

Mr. BAUER: And, Mr. President, in continuing along that line I wish to call the gentleman's attention to the "yellow dog" secret payroll of the Bay State Street Railway Company of $120,000 a year which was uncovered before the tribunal that was passing on the arbitration of the wages of their employees some years ago, of which Mr. Pelletier, a delegate here, was one of the arbitrators. Why, Mr. President, the matter is so notorious that no one can successfully defend it. I was astounded the other day to go into the telephone booths that are used by the members of the Legislature and only by them, and I found

scribbled on the walls of those booths, almost on the very walls of this State House, the telephone numbers of "Jake" Wardwell and "Charlie" Innes in almost every booth. [Laughter.] So I say, Mr. President, that the public control of all of this matter will wipe out the necessity of the consumer paying for any of this immoral political and immoral professional expense, besides rendering back to the people only service and not profits.

Mr. MONTAGUE of Boston: I desire to ask the gentleman if he understood that railroads or street railways were covered by this proposition. I desire to ask if he understood that railroads or street railways were covered by the matter under consideration.

Mr. BAUER: I think the gentleman who has just spoken has a very conscious knowledge of the fact that they are.

Mr. DRESSER of Worcester: I wish to suggest one point of view in this discussion which I think has not been developed and seems to me to be important. This resolution is one of five or six resolutions reported to the Convention which extend the field of public endeavor and to some degree at least, if anything ever is done under them, enter the field of what we are wont to consider private enterprise. I refer to one resolution coming from this same committee relative to the use of agricultural lands and forest and water resources; to another resolution which extends the power of cities to purchase and sell land for homes for citizens and similar purposes; to the provision for State insurance of all kinds and to some extent of social insurance. The question under any one of those resolutions is not whether the Legislature or the people shall act under them, and the argument which has been addressed to the Convention with reference to the pending resolution, that the Legislature or the people never will do anything harmful under it, is an argument not entitled to any weight. The question is whether, in reviewing our system, our theory of government, we shall change that theory in any degree by removing the barriers set up by the construction of the court and by the common understanding of the people from time to time between what is proper public endeavor and what is proper private endeavor.

Let us imagine the Constitution with these new powers, the five or six that have been reported, written into it, and compare such a document, and what is likely to arise or what may arise under it, with the document we have now.

Suppose that with the power to deal in land for homes, with the power to go into all sorts of insurance, with the power, even as closely regulated as it is under this pending resolution, to establish all sorts of business, as they do in Australia, where, notwithstanding the assertion of my friend from Worcester (Mr. Washburn) that a clean collar is not a necessity of life, they have public laundries run by the State, — imagine these various powers written in. We find, then, that there have been taken down little by little the several barriers or distinctions between public and private endeavor, so that if, after these amendments have been included, it should seem desirable, for example, to take over the Gloucester fishermen, and if this might not quite come under the development and use of our water resources, or quite come under the distribution or conservation of food-stuffs, but possibly does come somewhat near a public need, of which the Legislature now and hereafter is the sole judge, and it is put up to the court to determine

whether or not the taking over of the Gloucester fishermen is a public use, will not the court say, will it not almost be bound to say that these new provisions written into our Constitution by this Convention express, in the words of Mr. Justice Holmes, "the preponderant public opinion" that such a matter and kindred matters, if the Legislature thinks wise, are matters of public use and therefore to be undertaken by public authority? It seems to me that the risk of the pending resolution is not so much in itself as in its implication and the extension of that domain of public use which it foreshadows.

Now is any extension necessary? Of course it is not useful or necessary to spend a moment of time upon a review of the constant pacekeeping of the Legislature and of the courts, whenever the courts have been asked to construe legislative acts, with the needs of our advancing civilization. Fifty years ago, perhaps, nobody thought that a public water supply was of public interest. Nobody thinks to-day that a public water supply is not absolutely a public purpose. There are innumerable similar instances. Every advance in our whole civilization has affected or extended public control, and under our Constitution there has been no retardation of governmental usefulness as opinion from time to time desired it.

Now a word as to the pending resolution. It has two aspects, unfortunately, unduly and to my mind unwisely commingled. It has the aspect of the protection of public health and public safety in times of need. I believe that so far as the providing of fuel, so far as the providing of foods, so far as the providing or distribution of flour, so far as any of the things that we all agree to be the absolute essentials of life are concerned, this State to-day has power to do what is necessary to be done to protect the health and the safety of its people. If our streets are to be lighted, coal may be necessary to do it. If our hospitals are to be heated, coal is necessary. If any of our works is to go on, if our people are to exist, the taking, distribution and control of those things are necessarily a matter of public control and public interest. That I believe can be done now. The old opinions of the court had to deal not with the emergency or the need but with a question of whether coal could be bought cheaper or not, which is a very different question. If it can be done now, then this resolution, so far as the emergency or the need is concerned, is unnecessary. Nobody knows absolutely whether that can be done or not, because after all our court must determine finally whether it is a public use. And therefore we are agreed, I take it, the great majority of us, that the primary function of government being the protection of the health and the safety of its people, if there is any doubt about the power under the Constitution now, we should see that such power is given.

Mr. Anderson of Brookline: I thought the gentleman misstated the interpretation put by the Supreme Judicial Court in the public need question which has been before the court twice. I wish he would restate that. If I am correct in my view of the decisions, only two of the judges of the Supreme Judicial Court held that even in time of need was there power in the Legislature under the existing Constitution to authorize a municipal government to deal in coal, fuel and any other necessaries. That is one thing that I wanted to ask the gentleman.

Mr. Dresser: I have not looked at those opinions for some time,

but I think that the gentleman has stated them accurately. I do not care. In the first place, those are advisory opinions, not the decisions of the court. They are given as the advisory opinions are given, not after argument, not after long deliberation, but in an advisory capacity, and are not binding upon the court in any later decision. In the next place, conditions change from time to time. I do not know what may have been the situation then, but it is inconceivable, — inconceivable that there is not power in this State, and power which the courts will recognize. To provide the essentials for the health and the safety of our people, — that is the first duty of government.

Mr. ANDERSON: I ask another question, for I am very anxious to get the gentleman's view in which I always am interested, and I am particularly interested now, for he said, greatly to my surprise, that the times have changed, — and we must change with them, I suppose was the inference. He said a moment ago, and I wonder if he seriously means it, that the question of what was a public use ultimately must be determined by the court, whatever there was in the Constitution. Those were not his exact words, but that was the import as I understood it. Now does he mean by that that the people of the Commonwealth cannot adopt a Constitution which shall create a new category of public uses binding upon the courts of the Commonwealth?

Mr. DRESSER: Of course I said nothing of the sort and I think the gentleman must have misunderstood me. The question of what is a public use must be determined finally by the court; must be determined, under the Constitution as it stands at this moment, simply by what the court believes, finds to be, as I like the phrase, "the preponderant public opinion", — which this court never has yet violated and which the Supreme Court of the United States does not violate.

Now take the other suggestion of the gentleman. Of course we can write into the Constitution whatever we choose. And when we write it in it is binding on the courts. And my point is that when we have written into our Constitution these five or six extensions and definitions of public use where there is now no definition, — except, I think, the homestead taking, practically no definition of it, — when we write these in we then have asserted in this Convention a new conception of the duties of the State, and a conception which the court must follow. I fear I do not make myself clear about it, but it is my intention to compare our present theory of leaving the Legislature free and the court free to translate into legislation whatever is necessary to meet the changing conditions of our civilization.

Mr. CREAMER of Lynn: I should like to ask the delegate from Worcester if it is not better to have our Constitution written by the people through this Convention and their action afterwards on what we do, than to have our Constitution written by the courts.

Mr. DRESSER: The Constitution is written by the people if we leave the phrases flexible to meet their desires. The phrases of our Constitution are flexible now and do meet the changing desires.

Mr. CREAMER: I should like to ask the gentleman from Worcester if it is desirable to have our Constitution and our laws so flexible that different judges may pass different opinions upon them?

Mr. DRESSER: I suppose that is inherent in any human institution, — that different executives, different commissions, different judges, different delegates approach a question from a different point of view.

Mr. Creamer: I simply asked him, — he has not answered my question, — if he thought it was desirable to have our Constitution so flexible, or if it was not more desirable to have our Constitution state absolutely what we mean and what we want.

Mr. Dresser: I think it is better to have a flexible Constitution than a rigid one which may last but three or four years and then have to be revamped. [Applause.]

Mr. Donovan of Springfield: I should like to ask the gentleman to explain a little further his statement that our Constitution was founded upon a theory of government. My object is to find out if we must hold to the theory regardless of the facts of our present industrial and social life.

Mr. Dresser: There is no theory expressed in our Constitution anywhere that prevents our Legislatures, our people, our courts, from meeting, as they have met, the changing conditions of social life.

Mr. Donovan: The last statement of the speaker begets another question. In his reference to the fact that public opinion will manifest itself in changed legislation, he held that it never has been known that the courts have not succumbed to this public opinion. Now, is it not possible, and has it not been the history of our State and Nation, that there have been times where that public opinion had to manifest itself in terms of threatened violence before those forms of legislation and the judgment of the courts began to reflect the changing opinion of the people?

Mr. Dresser: My statement was confined to our Massachusetts Legislature and our Massachusetts courts, and I prefer confining it there. So far as making use of violence, I am aware of but one instance, which was the Shays's Rebellion referred to the other day. I should say that the present resolution is supported by those of us, who are the great majority, who believe that if there is any doubt that the public, the government, has no power to provide in times of need these necessities, — and I do not mean times of war, I mean the ordinary times of need as need develops from time to time, — that it is entirely right and wise probably that that power be granted. The other aspect of the resolution, which calls to its support other people, whom I believe to be the minority of this Convention, is that power should be given to the State to compete or to go into business for the sake of diminishing prices. Now, there is a difference. If coal is a necessity of life, whether we shall have coal and get it, get it at any price, get it so far as we can, as we get water, as we get air, is one question; but whether we shall pay $8 a ton or $8.10 a ton, is another. They are two distinct propositions. One has to do with public duty, the other has to do with the ordinary conditions of trade. Now, those ordinary conditions of trade may be taken up —

Mr. Willett of Norwood: May I ask the gentleman from Worcester if under ordinary conditions, if correctly defined, we can save fifty cents a ton or a dollar a ton by purchase of coal for the Commonwealth of Massachusetts, would he consider that a desirable and proper activity for the Commonwealth to engage in?

Mr. Dresser: If I understand the gentleman's question it is that if the Commonwealth could by buying coal save money and then sell at a less price than is now charged, whether that would be desirable. I do not know whether that would be desirable or not. I do know, I think I

know, that that is a change of governmental theory. The desirability of doing it may be a question for discussion by the Legislature. The question whether that theory shall be a part of our fundamental law is a question for us here, and a much more far-reaching one.

Mr. BAUER of Lynn: The gentleman from Worcester has just said that it is a change of governmental function. Has not the government for a long while been tending to supply water to the inhabitants of the cities and towns and districts on the ground of health, and while that may be a health measure is it not equally a health measure to prevent people from freezing to death?

Mr. DRESSER: I have covered that point. I agree that it is a health measure to keep people from freezing to death. I deny that it is a health measure whether the price of coal is $8.10 or $8.05, if that is the only reason for the legislation. There is a distinction between the supplying and the getting of the things necessary to our existence and the mere question of price. Now, the question of price is cared for in other forms and corrected in other ways. It is corrected by supply and demand, by economy. It is corrected by our mass of legislation, affecting not only business as conducted in Massachusetts through State statutes but through the Federal statutes. That question is not without its remedy, but to attempt to regulate it through this resolution is a departure from our theory of leaving to the government what is purely governmental and leaving to the individual what may be made the subject of reasonable and legal competition.

Mr. BROWN of Brockton: I would ask the gentleman for his opinion on this question: Has this resolution any merit from the standpoint of affording an opportunity to educate the people perhaps to the false economic theories which he now thinks they hold? Has it any merit from the standpoint of Legislature deliberation and possible education therefrom?

Mr. DRESSER: I cannot say anything about economic theories, false or sound, because I know nothing about them. As to the other suggestion, I do not think this measure ought to be limited to war or war conditions. There may come a time in Massachusetts when, as the delegate from Worcester (Mr. Hobbs) suggested, we shall have to do like Pharaoh, and in the seven fat years save our corn for the seven lean years. The minute it appears that in Massachusetts we cannot get the essentials of life, or that we are at the will of transportation or other things, it then very probably is as much a duty of the State to see that those essentials of life are gathered and provided as it is to provide water or to provide light. The question comes solely upon where the line is to be drawn, and it is a changing line, which under our present Constitution does change and may change from year to year, but, if our Constitution is written, as has been suggested, specifically and definitely, so that the man who runs may read, the precise words may be outgrown in a month.

Mr. WILLETT of Norwood: I wish the gentleman from Worcester would clear up one point to which he referred. Take, for example, the question of theory of government. I am asking for information. The town of Norwood runs a municipal light plant as a business proposition. It makes, perhaps, twelve or fifteen thousand dollars a year. It sells stoves and other like fixtures. It does everything incidental to business, and it appears to be to the advantage of everyone in the

community, so far as I am able to judge. I should like to ask the gentleman from Worcester whether, under the statutes which are provided for the Legislature to take possession in connection with other like matters, there is a change of theory of government? Take, for example, in the question of the distribution of coal, or the distribution of ice or any like necessities, is there introduced any change from the existing situation, or any change as regards the theory of government?

Mr. DRESSER: Do I understand the gentleman to have reference to this specific resolution, the phrasing of it? I do not think I quite got his question.

Mr. WILLETT: I understood the gentleman from Worcester to say that under this resolution we were launching out upon a new theory of government; that if the Constitution was changed so that we had the right to do these things that are provided for under it we in fact were introducing a new theory of government, a different theory from what we now have. I asked whether there is any real distinction between these activities which already are permissible under the Constitution as it now stands, such as relate to providing electricity and gas, and those which this resolution would permit, — such as the distribution of coal and ice and other like necessities.

Mr. DRESSER: The justification for the municipal light plant is not getting cheaper light, it is making safe highways, it is bringing to the people facilities through taxation which possibly no private company might give. The water company, for example, might never find it profitable to enlarge its reservoirs to provide for the future, because it could get no adequate return, but because water is a health and a safety necessity the municipality may take it over and may build for the future. The basis, the justification for the light, the water, is found in our present Constitution, because of the general welfare and the police power and the right and the duty of the State to look after the health and the safety of the public. Now, I cannot distinguish every case that may be brought up. There may be a public need for shoes, as there is, but the making of shoes may not be a public purpose. There may be a need for cheaper meat, but the killing of cattle may not be a public purpose. That distinction always can be drawn now, and the public purpose grows as our need for it grows and as we all come to believe it to exist. Here there is no distinction based on that ground. Anything that possibly can be imagined to be done becomes, under this regulation, a public purpose, irrespective of its immediate connection with public needs.

Mr. WILLETT: I want to ask further, if there is no difference, and I cannot conceive that there is any difference between the distribution of water and the distribution, we will say, of ice or of electricity or gas or any of these public necessities, how are we to meet these changing conditions to which the gentleman refers unless we give the Legislature full authority and power and leave it for them to deal with the need as the need arises? Is it possible for us to deal with matters in any better way than to give great freedom to the Legislature and leave it for them to determine, in the interest of the people of the Commonwealth as a whole, when the time has come for different action?

Mr. DRESSER: Precisely my point. We do leave the Legislature as free as it is possible to leave it. Every single bit of legislation that has

been enacted has been enacted as the State, as the people, recognized new uses, new demands and new needs. That will be for the future to determine. We cannot tell now what will happen a year from now or twenty years from now in our public sentiment.

Mr. WILLETT: May I ask the gentleman from Worcester, then, what his objection is, if he has any, to this present measure before this Constitutional Convention?

Mr. DRESSER: May I restate my objection? There is no objection that I can conceive of to giving, if it is necessary, — I do not think it is, but if it is necessary, — to giving to the Legislature the power to meet the public need as to these matters of absolute necessity. There is every objection, and I think most of us agree to that, to giving to the Legislature a power to deal in matters, necessities, fuel, food, coal, anything where the reason for doing it is not protection of the public but a desire to lower the price. I want to make that point clear, if I can. It is not the public business, as a governmental concern, to see whether boots are sold at one price or another, or hay is sold at one price or another, or coal at one price or another, until the fixing of the price violates some commercial law or some monopoly law or something of that sort; it is not a public business to get everything we need as cheaply as possible; it is private business to do that. It is the public business to see that we have the necessities; at a price, or at no price.

Mr. CREAMER of Lynn: I should like to ask the delegate from Worcester if he does not consider the prevention of private extortion a proper public purpose under any and all conditions.

Mr. DRESSER: I do. It is so considered by every Legislature that has acted upon it. There is no constitutional requirement necessary.

Mr. CREAMER: I think that the contention of those of us who are in favor of the Anderson resolution is that the Legislature has not the proper power to prevent that private extortion under present circumstances.

Mr. DRESSER: With that contention I do not agree.

Mr. BROWN of Brockton: Is it not, then, your fear that the Legislature may at some time become more radical than it seems to be at present?

Mr. DRESSER: I have no fear either of the Legislature or the people on this question. It is purely the basic question of what sort of a government you want. I do not care whether the Legislature shall act or shall not act under this or under the other resolutions that are based on the same principle. It is a question whether we shall change our theory, — because these things all fit in to a change in theory. Shall we lose the distinction now, in this year of 1917, between what really is a governmental purpose and what anybody at any time may think it is desirable for the State to undertake?

Mr. LOWE of Fitchburg: I should like to ask the member from Worcester if this resolution gives any authority to the Legislature to grant subsidies or pay bounties to increase the necessities of life. Now, I am more anxious about the quantity of the necessity than I am about getting the necessity to the people.

Mr. DRESSER: I do not understand that there would be any power under this resolution to do what the gentleman suggests. There would be power under another resolution, reported by this same committee,

on resources. I have not examined it enough with that in mind to have a very definite opinion, but it is referred to by the chairman of the committee as a supplemental resolution to this, and perhaps there is the power there. So that if they both were passed there would be the possibility of the State, if it were desirable, going into the farming business and raising milk and distributing it. Now, the doubt as to the two aspects of this resolution, Mr. President, may be removed, it seems, very simply. I wish that it were possible, — I am not familiar with what procedure might be necessary, but I wish it were possible, — for the chairman of this committee to bring in a resolution, based on the various suggestions of the members that have been made, which shall remove any doubt there may be as to the power to deal in any times of public emergency with these necessities of life, so that we might have before us the possibility of determining now, as we shall have to determine on the succeeding resolution, whether or not we shall change the theories of our government.

Mr. Leonard of Boston: I have listened with some attention to the remarks of the last speaker, especially what he has said relative to the court passing upon the matter of public uses and public purposes. It occurs to me that if we were to adopt the amendments offered by the gentleman from Winchester (Mr. Dutch) there is another question that we might call the court to pass upon from time to time. Upon a matter of what are public purposes, the court has passed upon many times and upon a variety of issues. It has declared that the allowing of the city of Boston to sell bonds for the purpose of loaning money to rebuild after the great fire was not a public purpose, yet, on the other hand, the allowing of the balance of that year's salary to the widow of a deceased judge has been declared to be a public purpose, because the court said that the Legislature by doing that might aid in the procuring of valuable service to the State from citizens who might serve in the capacity of judges. Well, now, it seems to me that if we are going to pass any amendment to the Constitution here at all there is danger of having a too restrictive amendment. The gentleman has moved an amendment when and so far as a public exigency exists. Now, who is going to determine what is an exigency? In the first place, of course the Legislature will determine that question. In a certain combination of circumstances legislation is asked for, and the Legislature says that that is an exigency and therefore this legislation is justified; but supposing that the legislation enacted is contested, and supposing there are litigants who say that there is no exigency, is it not reasonable to say, gentlemen, that at times we shall have at least what we might call mixed questions of law and fact that will go to the Supreme Judicial Court, and that the Supreme Judicial Court will be obliged to determine whether or not at the time that this particular act was enacted by the Legislature, there was or was not an exigency? Now, I submit that if that is so, — if that is so, — however well qualified the Supreme Judicial Court is to pass upon matters of law, that there is no rule of the common law and there is no statute law whereby our courts can tell us whether or not exigencies in certain cases exist, because by the very form and interpretation of our Constitution our judges are given an independent salary and a secure tenure of office, and they do not feel that economic strain that must come from time to time to the people, and, moreover, men who could pass

upon such a question as an exigency are men who must be specialists and qualified by particular economic study upon that question. Now, I submit that however well qualified our courts are to pass upon questions of law the courts are not formed or constituted or capable of passing upon the question of an exigency, and if the amendment of the gentleman from Winchester (Mr. Dutch) includes that, and means that, that question sometimes will come to the courts; so I say it is very important of consideration from that point of view before we adopt it.

It seems to be the opinion of some that if we should adopt a resolution like this, immediately the State is committed to a wide policy of going into every kind of business or commercial enterprise. That does not appear to me to be the fact at all. We simply are submitting a permissive amendment to the Constitution, and there are many countries and States where there is no Constitution at all and no restriction upon the legislative power, where the States or countries have not gone to any such extent into business as has been suggested.

There is one other thing I should like to call to the attention of the delegates which seems to me to be a governing principle that we might consider in a matter of this kind, and that is the general rule that has been followed in the interpretation of our constitutional law. I refer particularly to the Federal Constitution, where it has been held that wherever a power has been granted to the Federal government that power can be exercised in every particular, and I think here, when we are framing an amendment, that if we are going to adopt an amendment it should not be a restrictive one, but it should be one that shall give to the Legislature all the power that will be ample authority to meet any given case. And in that connection I just want to quote very briefly from an elementary work, namely, Mr. Bryce in his "American Commonwealth" (Part 1, chapter 33), when he refers to Chief Justice Marshall in the early decisions on the Constitution. He says:

> The people . . . when they confer a power, must be deemed to confer a wide discretion as to the means whereby it is to be used in their service. For their main object is that it should be used vigorously and wisely, which it cannot be if the choice of methods is narrowly restricted; and while the people may well be chary in delegating powers to their agents, they must be presumed, when they do grant these powers, to grant them with confidence in the agents' judgment, allowing all that freedom in using one means or another to attain the desired end which is needed to ensure success.

I submit that in handling this question here a small amendment, which is very limited in the number of lines and sentences, but yet which probably would be a matter of very wide construction and wide interpretation, will be very important in future decisions. It seems to me that the best thing for us to do, and the wisest thing, is not to be frightened by what may happen, but to delegate this power freely and fully.

It seems to me that the two amendments that are offered by the gentleman from Winchester (Mr. Dutch) and the gentleman from Newton (Mr. Richardson) are suggestive of an incident that I once heard of a gentleman who had been to a horse fair and had completed a horse transaction, and he described it in somewhat these terms. He says to his friend: "I was at the fair, and as I was coming back I met another man, and he says to me, 'Were you at the fair at Gros?'

'I was', says I. 'Did you trade?' says he. 'I did not', says I. And so with that we traded, and he took my horse, that is, the other horse, and I took his horse, that is, this horse. When we were going he says, says he, 'There never was a man from Gros', says he, 'but could stick his finger in the eye of a man from Kilnagros', says he, 'and that horse you have', says he, 'is blind in one of his eyes', says he. 'Hello!' says I. 'Hello!', says he. 'There never was a man from Kilnagros', says I, 'but could stick his finger in the two eyes of a man from Gros', says I, 'and that horse you have is blind in both his eyes', says I." Now, gentlemen, it seems to me that the first amendment offered by the gentleman from Winchester puts one eye out of a fairly decent nag that the committee have offered us, and the other amendment, which still further limits the operation of the measure and strikes out the dealing in the various necessities of life, puts out the other eye and really gives the people a blind horse, and I do not think that the Convention want to submit that sort of an amendment if they are going to submit anything to the people to be voted upon at the election either this year or next. [Applause.]

Consideration of the resolution was resumed Tuesday, October 2.

Mr. Martin M. Lomasney of Boston offered the amendment cited at the beginning of the chapter.

Mr. Lomasney of Boston: This is a very important question, and it seems to me that before we go too far in these extraordinary times we should pause. Any man who knows anything about existing conditions will admit that real estate pays more than its just share of taxes. Real estate is visible; it cannot escape taxation. It may be valued more than it is worth, it may be valued less than it is worth, but it pays taxes. It is easy enough for some people who have bonds and stocks, and also that class of people who invest their money in life insurance that is to be paid when they die, — it is easy for those people to talk about shifting the burden upon some one else; but the taxation of personal property is almost a farce. We do not get one-third of it. Now, that is my opinion. Down-town property in the heart of this city is not paying more than two and one-half or three per cent. Many of the big office buildings are let on leases; in many cases those leases were made when times were normal. Times are not normal now; we have a war on; all kinds of taxes have got to be raised. How is it going to be raised? Most of it from real estate.

The district I, in part, represent pays pretty nearly one-half of the taxes of the entire city of Boston. The richest class of people own property there, and the poorest class of people own property there. Down here on the slope of the hill you will find poor men and women who work from sunrise until dark, and far into the night; they put their little savings into an equity in a piece of real estate, so that they may have something to hand down to their children. You will find that all over the Commonwealth, — men and women working and saving nearly all the time, night and day, so as to buy a little home, that they may leave something to their families.

Now, I suggest, Mr. President, before we go too far, we should recognize that these people have vested rights which should be protected. I desire to stop no person from getting proper relief at the

proper time, but I believe that the present proposition before the Convention goes too far; particularly in these times. No one can tell where we are going to stand if this war taxation keeps up. I say, sir, real estate can stand so much, and no more. Consequently, Mr. President, I offer this amendment because it deals with this matter in the proper way. It seems to me that the other resolution goes too much into details.

The Convention, it seems to me, has got away from the fact that we are a Constitutional Convention. We are declaring principles of government, we are not declaring for details of government. It seems to me that is wrong. If we keep on in this way, instead of having a short, concise Constitution, we shall have one as large as our Blue Book. We are going too much into details. The propositions submitted to the Convention by the gentleman from Boston and the gentleman from Brookline, it seems to me, are open to these objections.

I suggest the amendment I offer, because it declares what shall be the principle of the State, and leaves to the Legislature the duty of working out the details. No. 358, it seems to me, is socialistic; it goes too far; it is too sweeping. See the words it uses. It allows the taking of markets, docks, fuel, and coal-yards, cold storage plants, elevators, warehouses, slaughter-houses, tanneries, etc. Why cannot we leave all that to the Legislature? Where are you going to be if you try to put through a constitutional amendment like that? You will have every business interest in the State aroused. You will have the cry raised that it means increased taxation. Why not realize this at the start, and declare for a short, concise article of amendment, so plain that no one can misunderstand it, and so broad that the Legislature can act in times of emergency? What do I mean by "emergency"? Flood, fire, famine, — a thousand other things; or if the milk Trust, or the ice Trust, or the coal Trust, or any other Trust is trying to crowd and rob the people, we then will have a law passed by the Legislature that will stop them. It seems to me, sir, that in these times to pass an amendment like the one submitted will expose to the objection that the times are not normal; that the cost will be prohibitive; and it will result in a great deal of injustice if it is passed and ratified by the voters.

Mr. Herbert A. Kenny of Boston: Does the gentleman include in "emergencies" times of strikes?

Mr. Lomasney: Yes, sir. I provide for shelter. What does that mean? In case the mill owners put their employees on the street, put them out of their houses, I want authority to feed them, clothe and house them, if necessary, so as to protect them in times of emergency or distress. And what is more of an emergency than distress in times of labor strikes? Why commit the State to paternalism and to socialism at the start? Why not try my proposition? Why not try it and see what it will do? Why argue because this or that thing has happened somewhere else that it applies here? It does not apply here. We try to take care of our people here. We can trust our Legislature to take care of our people if we will declare for a sound, comprehensive article of amendment that will permit it and not for a socialistic statute law. Because, Mr. President, if we mention in this Constitution all these things, the very thing that might save us might be prohibited because we have not specifically mentioned it.

I trust, sir, that the amendment I have the honor of presenting will be adopted.

Mr. Dutch of Winchester: I should like once more to make clear the issue which is presented by my amendment, and to explain in effect what I take it the debate has developed.

I think the last speaker has shown very clearly that we ought to confine this resolution to times of emergency, — the operation of it to times of emergency and distress; we ought not to go further in declaring in the Constitution the policy of this Commonwealth.

The other day we had amendments which, like his, accomplished not only that purpose but restricted the proposition in many other ways, and they were defeated. I doubt if they would be defeated again to-day. But I ask this: I ask that we take, in the first place, a test vote on this one question of confining this resolution to the emergency proposition. That is all that my amendment carries out, absolutely all that it tackles, — confining the proposed resolution to times of emergency, times of public exigency. No other change is made or intended by that resolution.

Mr. Anderson of Brookline: Permit me to inquire of the gentleman from Winchester whether he would be content with the language which is suggested to me by the delegate from Fall River (Mr. Cummings), reading "whenever the public exigencies require," which I am told by the learned delegate from Fall River is language which has been construed and apparently covers exactly what some of my friends seem to me to have needlessly in mind. But I am not disposed to haggle about it.

Mr. John W. Cummings of Fall River moved that the amendment moved by Mr. Dutch of Winchester be amended by striking out the words proposed to be inserted at the beginning of the article of amendment, and inserting in place thereof the words "Whenever the public exigencies require".

Mr. Cummings: I have adopted the phrase that is used in Article X of the Declaration of Rights; and that phrase has been construed, and the scope of the authority, legislative or judicial, has been passed upon. I am going to ask the attention of the Convention a moment while I read the last clause of Article X of the Declaration of Rights: "And whenever the public exigencies require" — which is the language in my amendment — "that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor."

It is obvious that there are two significant phrases in that sentence. One is "whenever the public exigencies require"; the other is "property should be appropriated to public uses." Our Supreme Judicial Court has held, in at least four cases, that the question of what is a public use is a judicial question, but the question of what is a public exigency is a legislative question. Therefore if the amendment of the gentleman from Winchester is adopted, or my amendment, which is the same thing, using the words of the tenth article, is adopted, it will be for the Legislature to decide whether a condition of things exists which creates a public exigency. Now, as to public use. The use here is expressly stated in the amendment, in the resolution; and no other use can be made of the property commandeered than the use which is expressly stated. So that the fears of delegates that if this

limitation is imposed which was suggested by the gentleman from Winchester,—that the power of the Legislature will be strictly limited,—are groundless. The power of the Legislature will be exactly the same as if these words were not there. They are not in the nature of legal limitations; they are not constitutional limitations. They are in the nature of moral restraints. They declare a policy which the Legislature is expected to follow, but the Legislature decides the question for itself.

If someone says therefore if this amendment is adopted the Legislature will be restricted to public exigencies as you or I may understand them, I take leave to say that that is a mistaken view. The Legislature decides whether by reason of a strike, a flood, a famine, war, or any other cause, a monopoly, an exigency exists, and that decision is final.

But it undoubtedly is true that the moral restraint should be put in this amendment, unless we want to turn this State over into a trading corporation, — and I, for one, do not want to do it.

Further, there is reason for this. The only justification that the State has for taking private property is that a public exigency exists and it is to be taken for public uses. It should not be taken unless a public exigency does exist.

Now, it was said by the gentleman from Worcester last Friday, — and I think stated accurately, — that this is something more than an economic proposition; it is a fundamental change in the policy of this Commonwealth, which will permit, — unless this amendment that we offer is adopted, — which will permit the taking of private property whenever the Legislature sees fit, whether an exigency exists or not. That is wrong. The justification for taking your property is a public exigency. That should be expressed. That is the counsel, that is the advice, that is the moral restraint that the people of this Commonwealth want to impose upon their Legislature.

I hope, therefore, Mr. President, that the amendment will be adopted. [Applause.]

Mr. ANDERSON of Brookline: In the hope I may abbreviate somewhat the discussion, and not merely abbreviate, but get the judgment of the members on points on which there are real differences, I beg to state that we have had a meeting of a part of our committee this morning but I am not able to make a new committee report. The most I can say is that I have been in consultation with several members. I think, however, I state it accurately if I state that the weight of the opinion, as far as I have been able to get it, is that the committee would be content to accept the amendment of the gentleman from Fall River (Mr. Cummings), which in our view I think signifies the same as the first amendment of the gentleman from Winchester (Mr. Dutch); so that you would begin by reading: "Whenever the public exigencies require, provision may be made by law to authorize". Then we would accept the substance of the amendment of the gentleman from Boston, — and there being so many of them I will name him, Mr. Quincy, — slightly changed. Insert after the word "the", at the end of line 1, the words "Commonwealth to contract for or to take by purchase or otherwise"; then strike out the words "by the Commonwealth of". It then would read "food-stuffs, feeds, fuel, ice

and other necessaries of life, paying reasonable compensation therefor". Strike out the words "the sale of", and insert the words "to sell the same to the inhabitants thereof and to any county, city, town or other municipal corporation therein"; adding after that, in order that there may be no doubt that in times of emergency the Commonwealth may use its political divisions as distribution means: "for resale to the inhabitants thereof"; adding also, in deference to the amendment of Mr. Quincy, the words "also to provide temporary shelter". That would bring you down then to line 8, at the end of "therein." Then go on: "the Governor, with the approval of the Council"; strike out after "if he deems that a public exigency exists," — and, in deference to the fears that some gentlemen have as to what wrongdoing the Governor and Council might be guilty of, insert the words "if the Legislature is not in session," — then the Governor and Council "may, unless otherwise provided by law, exercise the powers hereby granted."

Let all that I have now stated be section 1. Then, in deference again to a suggestion which came to me from the gentleman from Beverly, we would make the rest of the provision section 2; indicating that section 1 was an emergency power, and that section 2 is a permanent addition to the "business functions," if you choose to use that phrase, of the Commonwealth and of the subdivisions thereof.

Section 2 would begin with line 12; and the amendments which I personally suggest to that are that in line 14 you strike out after the word "harvest", and insert after "manufacture" the words "and to sell"; so that it shall read that the municipalities may be authorized "to harvest, to manufacture and to sell ice". I think that is a pure matter of form, perhaps necessary. Then, in line 18, add after the word "plants", at the end, the words "preserving and storing". The gentleman from Quincy, I think, wanted those words in. I am glad to have them in. At the end of line 23, in deference to the views of the gentleman from Norwood (Mr. Willett), we have accepted the provision for uniform accounting; but the word "article" should be struck out, and the word "section" substituted; for emergency power ought not to be hampered by elaborate provisions of law as to accounting. If the Legislature deals with an emergency, it must deal with it with such officials and such methods of accounting as it can provide for, and not with the elaborate methods which might be entirely proper for a permanent use of the power. Insert then "section" instead of "article." Then add a semicolon, and say: "; and all offices and positions created in connection with any undertakings under this section shall be filled in accordance with the laws and regulations governing the classified civil service of the Commonwealth and its municipalities." We accept thus as applicable to section 2, the permanent power, the substance of the civil service provision contained in the amendment of the gentleman from Newton (Mr. Richardson).

Now I shall move that, again stating that I have not the whole committee with me — I was not able to get them together, — but as embodying, in, I think, convenient form, the most of the amendments which have been suggested.

Mr. George W. Anderson of Brookline offered a substitute for the new draft cited at the beginning of the chapter.

Mr. MONTAGUE of Boston: I desire, Mr. President, to ask the gentleman from Brookline this question: Does not the second section as he proposes it do just exactly what the gentleman from Fall River says ought not to be done? That is, does it not authorize the permanent establishment, in times of peace and quiet, by the Commonwealth, of all kinds of businesses?

Mr. ANDERSON: I do not think it is as broad as that. I was interrupted, and did not hear every word that the gentleman from Fall River said. I had conferred with him previously, and thought I had the substance of his idea and was in general accord. But I did not understand that the gentleman from Fall River took a position in opposition to the extension of municipal powers which the Legislature might grant under section 2 of the resolution as I now have it; that is, the latter part of the whole. I thought I was in accord with the gentleman from Fall River.

Mr. CUMMINGS: The gentleman from Brookline who has just taken his seat states my position accurately. The words "whenever a public exigency exists," or "whenever public exigencies exist", — which is the phrase taken from the tenth article of the Declaration of Rights, — were intended to qualify and limit the first part of the report, and not the whole of it; because the first part contains the provision to take by eminent domain. The first part cannot be justified, — the taking of private property by eminent domain cannot be justified, — unless public exigency exists. But the direct authority of the Legislature to empower a city or town to sell the necessaries of life, if you please, does not depend upon any public exigency; it is wholly a matter of discretion.

Let me say, Mr. President, that I am not so much opposed to the suggestion of the gentleman from Boston as my limiting the application of that phrase to the first section would appear; because, again, if it is put into the second section, — as I understand now it is to be split into two sections, — it still would be discretionary with the Legislature to do the thing, simply acting under the moral restraint or advice of the people.

Mr. LOMASNEY of Boston: May I ask the gentleman if that is not part of the Constitution now; or part of Article X, I mean? That is in the Constitution now, is it not?

Mr. CUMMINGS: Yes. The question that the gentleman has asked is answered by referring to Article X; it is the last clause in Article X. And that clause has been construed since, *Talbot* v. *Hudson*, 16 Gray, to mean that the Legislature's decision is final. It belongs in that group of questions that are never judicial, they are political questions; the decision of the political tribunal is final. If we added it to the second section I do not think it would impair the usefulness of the second section, but it still would have the value that it has in the first, — that is, merely moral restraint. But it is needed in the first, because we commandeer or take somebody else's property.

Mr. LOMASNEY: The amendment that I have the honor to submit, may I state, — I will read the whole amendment:

The maintenance, at reasonable rates, of a sufficient supply of food and other common necessaries of life, and of shelter, during times of war, emergency or distress, is a public function and it shall be the duty of the Commonwealth and of the cities and towns therein, whenever the public exigencies require, to take and to provide the same for their inhabitants in such manner as the Legislature shall determine.

If we pass this amendment, has not the Legislature with the present Constitution, with that amendment, the right to take food and those other necessaries of life, — milk, and ice, and those things, — if this amendment goes through as I have suggested it?

Mr. Cummings: I am not sure that I fully comprehend the scope of the question asked by the gentleman from Boston; but I am sure it is my fault if I do not.

Mr. Lomasney: I beg to repeat it, Mr. President. I shall try to be brief. I have not had a chance to have printed the amendment offered by me this morning, — wherein I state it is a public function —

and it shall be the duty of the Commonwealth and of the cities and towns therein, whenever the public exigencies require, to take and to provide the same for their inhabitants. . . .

If that amendment passes, with the present Constitution are we not in position to do the very thing he says we should do?

Mr. Cummings: May I trespass a moment on the patience of the Convention to look at the amendment and examine it? (After a pause.) Mr. President, I am not prepared to deny that the words in the concluding clause of Article X of the Bill of Rights do not cover the amendment of the gentleman from Boston; but I should like a moment's reflection. And I think, if I may say it in deference to the better judgment of the delegates of this Convention, this measure is of so much importance that all of us require a moment's reflection before it is passed to be submitted to the people. It is not as simple as it appears. It involves so many things that are foreign to what we have been doing that we ought to go with great care toward the adoption of them.

One thing in the amendment of the gentleman from Boston that bothers me more than anything else, — I will withdraw that, — that bothers me, is the provision to authorize cities and towns to take by eminent domain. The report of the committee limited the authority to commandeer, requisition, to act under the power of eminent domain and take property, — to the Commonwealth. I do not think it is advisable, — speaking now without much preparation, — I doubt if it is advisable to give that power to cities and towns so that they may take by eminent domain; although I recognize the fact that under this same provision of the Constitution cities and towns have been given by the Legislature authority to take for public purposes.

Mr. Lomasney: Does not the Legislature under this amendment have to pass on the matter? Does not that give everyone an opportunity to come forward to state his reason for, or to object, — giving everyone a chance to be heard? Does not the amendment offered by me do that?

Mr. Cummings: The statement is so that the Legislature will have the power, and will give to the people every opportunity to be heard. But one of the principles that was urged here the other day as of economic value was the power of collective buying, or the power of taking by the one without having too many in competition. If the Commonwealth alone can take, the competition is not quite so keen as if 317 towns and 37 cities could take. And I could not see, if they are given the right to buy and sell necessaries of life, why they should have this very extraordinary power to take private property.

Mr. Lomasney: It seems to me, Mr. President, that the amendment offered by me safeguards every man. It says here, clearly "in case of war, emergency, or distress". Now, what does that mean? Some emergency! Take the Chelsea Fire; take the Salem Fire; take an instance where a dam may break, with water coming into the community, — would not the gentleman allow cities and towns then to move and to provide shelter, food, clothing, medicine, — all such matters? Of course he would. That is what I am trying to accomplish, Mr. President.

Mr. Cummings: Under the resolution as amended, the thing which the gentleman from Boston asks could be done. The reason why it is better, in my humble judgment, to adopt the phrase "whenever public exigencies require" than the particular things, — war, famine, flood, or fire, — is because that phrase has been construed; we know what it means, there can be no dispute about it. The authority is in the Legislature, if we adopt the report of the committee as amended, to do all the things that the gentleman from Boston asks, excepting giving the town or the city the power to take. The Commonwealth must reserve that power to itself.

Mr. Dutch of Winchester: We have had a good many changes offered since the debate started this morning. We have had a most interesting suggestion from the gentleman from Boston in the third division (Mr. Lomasney), which I believe needs most careful study. We have had ten or twelve changes of varying importance from the chairman of the committee which reported this matter. We have had an amendment made by the gentleman from Fall River, which I am inclined to accept. I now desire to ask him one question, which I should like to have him consider, and perhaps answer now. In the tenth amendment it says: "and whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive reasonable compensation therefor". Now, what do those words include? I take it that those words include the public taking of land for a highway, for a park or a playground, or other public use. Now, if that is the interpretation of these words "public exigencies", if that is their scope, then I am inclined to agree with the gentleman from Boston in the third division (Mr. Lomasney) that we have got to use other words. I am inclined to think that perhaps the words which I adopted from the gentleman from Wellesley (Mr. Pillsbury), and the gentleman from Boston who sits next to me (Mr. Curtis), are not happy words.

Now, it seems to me that we have indicated clearly this morning that we have got to have more time; that we have got to consider these matters when we can have them before us in writing. And it seems to me that on a matter of this importance we ought to lay them over for one day, until we can have all these matters in writing. We have something come in here this morning which is a supposed suggestion of the committee, which since has been changed. There may be other matters that may come to light.

I therefore move that the matter lie over until to-morrow, so that these amendments may be printed.

Mr. Bryant of Milton: It seems to me that this debate is very illuminating. I think this matter probably will have to go back to the committee; but at the present time I think the members, including

myself, are learning something about the various phases of it. I hope we shall keep the main issue in mind; and the real issue is this: Do we mean to limit this activity to an emergency, or do we mean to throw it open to any time when the Legislature thinks proper? If we mean to limit it to an emergency, the amendment of the gentleman from Boston in the third division (Mr. Lomasney) does so limit it.

But I hope that no member here will vote for the phrase "public exigency" under the impression that "public exigency" means "emergency." Because it does not, Mr. President. "Public exigency" has been construed a great many times, and it means any condition of things under which the Legislature thinks proper to do a certain act. The Legislature may take land by eminent domain whenever it chooses or thinks it proper for the State, irrespective of whether or not an emergency exists. The committee in accepting the words "public exigency" in my opinion do not limit the scope of their amendment at all. They leave it just exactly where it was before they accepted those words, because of course it goes without saying that the Legislature will not act except when there is some public exigency, — at least as much exigency as is required to take land for a road out in the western part of the State.

"Exigency", — although in common parlance it does have some idea of compulsion and unusual condition of things, — "exigency" in this connection does not mean "emergency"; and the committee's resolution if amended by putting in the words "public exigency" will not limit the operation of their amendment to an emergency. The amendment of the gentleman from Boston would so limit it; but not the amendment of the committee.

I hope the main question will be distinctly understood here, so that when we come to vote we shall not vote for the word "exigency" under any impression that it enables the Legislature to act only in "emergency." We do know what the word "exigency" means, as it is used by the gentleman from Fall River.

Mr. Dennis D. Driscoll of Boston: I have no objection to postponement, if the committee which has charge of this affair will consider all these amendments and suggestions and have their report printed so that we shall have it at to-morrow's session to be acted upon.

I have a request to make to the delegates in this Convention. It is October second, and the people whom I have associated with all my life are much interested in this subject; we are looking to the delegates in this Convention to take some action which shall be referred to the people at the coming election. We are not here to stop the success of any invested money in this Commonwealth, or compete with it. We are here to bring about something in the interests of the people. We had an experience a few years ago during a great miners' strike, and I believe it was stated by the Supreme Judicial Court of this Commonwealth, by a vote of four to three, that it was unconstitutional for the cities and towns in this Commonwealth to start the coal business and sell to the people at cost prices.

Mr. Dutch: I think perhaps I can meet what the gentleman has in mind. It has been suggested to me that the Secretary can have these amendments printed and ready at two o'clock, and I have been asked therefore to change my motion that this matter be specially assigned to

two o'clock, at which time we shall have these amendments in print and that will save time.

Objection was made to a change in the assignment of the subject-matter.

Mr. ANDERSON of Brookline: The suggestion has been made to me by my friend from Fall River (Mr. Cummings) that if we could have it printed and have it before us this afternoon, so that members genuinely interested in the difficulties here could have the afternoon to consider it, meanwhile the Convention itself taking up something else for debate, we really would save time, and then take it up to-morrow morning. I accept that suggestion. My own desire would have been to get at it this afternoon; but in view of the obviously reasonable quality of the suggestion, and its origin, I hope that that disposition may be made.

While I have the floor let me make one other suggestion that I hope may clarify. I am not going to make a speech. Do not be frightened. Now that we have divided this into two sections, one an emergency power and the other a continuous power, let me direct the attention of the members who are more conservative to the fact that in not a single amendment have the words to which they really object been stricken out, for they are found in lines 13 and 14, in the words "to buy and to sell to their inhabitants the necessaries of life." If I were a conservative, and as much afraid of the Legislature as some of you are, and wanted to limit increased government functions to the extension of our distribution system, — and anybody who knows anything about our economic condition knows that we are in a serious economic condition because of the utter breakdown of our distribution system, — I would move to strike out the words "to buy and to sell to their inhabitants the necessaries of life", leaving the Commonwealth in its discretion to authorize municipalities to go into the ice business, — which they ought to be allowed to go into, — to have canneries and elevators, milk distribution stations, and those things in which manufacturing and production are only minor, negligible incidents, but the providing of which is absolutely essential unless you are going to see all food producing wiped out in this Commonwealth. Now, I say that in order that the members who do not hold our view may see the exact point upon which I think we really differ.

I hope that the motion of the gentleman from Winchester (Mr. Dutch) to postpone and assign first to-morrow will prevail, and I shall ask that the Secretary, if he can, have the amendments printed and before all the members at two o'clock this afternoon. I hope that that will meet the approval of the Convention.

Amendments were moved by Messrs. Kneil of Westfield, Clapp of Lexington, Balch of Boston, Loring of Beverly, Coolidge of Milton, Lowe of Fitchburg, Montague of Boston and Luce of Waltham, — all of which are cited at the beginning of the chapter.

The consideration of the resolution was then postponed until Wednesday, October 3, being specially assigned for 10.30 o'clock.

Mr. ANDERSON of Brookline: Yesterday at half-past one we had a meeting of the committee in the hope that we might lessen somewhat the labors of the Convention. We considered at that meeting all the amendments suggested, including the substitute resolution which is

printed at the bottom of page 3 and the top of page 4 under my name. Mr. Clapp of Lexington brought in another amendment, which is printed in the middle of page 4. After consideration of all the suggestions made in debate and by amendments proposed, it was the unanimous vote of the committee, ten members being present, that, in deference to the views expressed here, as well as in general accord with our own judgment, we should report the so-called Clapp substitute on page 4, — as being the most accurate embodiment of the views of the members of the Convention who have given expression to views, matured and obviously highly patriotic and thoughtful. I hope, — I have some reason to believe, — that all or substantially all the other propositions and amendments will be withdrawn, and that that proposition will command nearly, if not quite, unanimous assent in the Convention.

Mr. LOMASNEY of Boston: I should like to ask the gentleman who gave him assurance that my amendment would be withdrawn.

Mr. ANDERSON: No one. I stated that I had hopes and assurances that all or substantially all the amendments might be withdrawn. I stated that, knowing how dangerous that kind of prophecy is, and having learned by experience of the danger of indulging in any kind of prophecy. But I did have assurance that some of the other gentlemen, who thought that the other propositions were too broad or otherwise undesirable, were content to take Mr. Clapp's draft, and that therefore we might shorten the discussion and get, — where I suppose we all want to get, — to an immediate vote on something which will command the general support of the Convention. I move that the vote be taken on the Clapp amendment, on page 4, as the first vote.

Mr. HORGAN of Boston: I desire to ask the chairman of the committee what the limitation and definition, as he understands it, under court construction, of the words "public exigency" is.

Mr. ANDERSON: I adopt as being accurate, and from a good authority, the explanation made by the delegate from Fall River the other day. "Public exigencies" do not, in my opinion, limit the discretionary power of the Legislature. It is admonitory. It is a statement to the effect that this power is not to be exercised for trifling needs. The learned delegate from Fall River (Mr. Cummings), — perhaps the delegate who asked the question was not present at the time, — directed the Convention's attention to the tenth article of the Bill of Rights of the Constitution, in which similar language is used, which has been judicially construed in Talbot *v.* Hudson, 16 Gray, 417. If the gentleman who asked the question will look at that article and that decision and also will look at page 107 of the Manual of the Constitutional Convention, he will find the words "public exigencies" in quotation marks, and this statement: "The Legislature are the sole and exclusive judges whether the exigency exists which calls upon them to exercise their authority to take private property."

Mr. HORGAN: I desire to ask the chairman of the committee if the Supreme Judicial Court has not stated, in at least one opinion, that ultimately the question of the limitation of the political authority of the Legislature must be declared, determined, by the judicial authority of the State, and if, in the case of Talbot *v.* Hudson, Chief Justice Bigelow did not give expression to the same opinion.

Mr. ANDERSON: I have no doubt that in that opinion, which I have not read for some time, — certainly in hundreds of opinions, — is the

statement that the question as to whether a proposed or enacted statute was constitutional is a judicial question. But I do not understand that the gentleman's question on analysis comes to anything more than the question as to whether the judiciary has not always in Massachusetts claimed that the extent of legislative power was a judicial question. To that question I answer Yes. But there can be no doubt that public exigencies have been construed as indicated in the cases cited on page 107 of the Manual.

Mr. McLaud of Greenfield: I believe that in Talbot *v.* Hudson, as the gentleman from Fall River said yesterday, the court stated that there were two questions to be decided: One whether or not the facts in that case brought the case within the statute relative to public purposes, and they decided that that was a judicial question; but, once the question of purposes was decided, then the question of public discretion or necessity was exclusively within the power of the Legislature and was not a judicial question. Last Saturday I ran these cases down, from Talbot *v.* Hudson, and it was last cited as late as Boston *v.* Talbot in 206 Mass., page 82; and on page 90 is a collection of cases which the Massachusetts Supreme Judicial Court cites as authority for that very question, that as a matter of discretion or necessity the Legislature is the sole judge. Furthermore, in case any "doubting Thomas," if I may use that term, thinks that the matter might be taken to the Supreme Court of the United States, that it might be in conflict with the Federal Constitution, I will state that on page 90 of Volume 206 the Massachusetts court cites two Federal cases, namely, Shoemaker *v.* United States, in 147 U. S., and United States *v.* Gettysburg Electric Railway, in 160 U. S. In both cases the United States Supreme Court held that the question of discretion was solely a question for the Legislature, was not a judicial question, and was not reviewable by the courts.

Mr. Lomasney of Boston: I desire to call your attention to the fact that the amendment offered by me, and printed under my name in the calendar, contains the following words: "whenever the public exigencies require." That is a mistake. I did not put those words in the amendment.

Now, Mr. President, I would move, — I hope the Convention will pardon me for being so urgent, but we have to move in a parliamentary way, — I would move that the amendment offered under my name, on page 3 of the calendar, be voted for first, as a substitute for the motion of the gentleman from Brookline.

Mr. George of Haverhill: Since this question has come before the Convention the learned chairman from Brookline has brought in at least six or seven new measures, and the more the lawyers discuss it the less we know and the less they know. Now, I hope this Convention, bearing in mind that we have 150 attorneys here, who are somewhat divided upon all these questions, especially when we come to the socialistic doctrine that was derided here a few days ago, and which seems to have been withdrawn in the last few days, — I hope this Convention will adopt the resolution offered by the gentleman from Boston in the third division (Mr. Lomasney). This is the only emergency proposition that has been brought in here. The amendment offered by the gentleman from Lexington (Mr. Clapp) I think would be a very cumbersome proposition. It says that whenever public

exigencies require, the Legislature may authorize the Commonwealth to provide shelter and do certain other things.

Now, in the first place, we have got to have the exigency. We have got to wait till something turns up, and then the Legislature is going to authorize the Commonwealth to do something. I believe that the people want a resolution here that will allow the Legislature to provide for these things. It seems to me that when we state here that "The maintenance, at reasonable rates, of a sufficient supply of food and other common necessaries of life, and of shelter, during times of war, emergency or distress, is a public function, and it shall be the duty of the Commonwealth and of the cities and towns therein to take and to provide the same for their inhabitants in such manner as the Legislature shall determine,"— it seems to me that that goes as far as we ought to go. I am rather doubtful about authorizing towns and cities to go into business along the lines that were suggested first by the gentleman from Brookline. He said yesterday that he could trust the Legislature, but he does not meet the real objection. We have got to trust municipal government, and municipal government in Massachusetts is just as near a failure as it ever was in any Commonwealth in the United States. It cannot perform the duties that it performs now without robbing the public, and we do not want it to have any more to do with going into business except the kind of business that is limited to such an extent that it would protect the taxpayer. When I say "taxpayer" I do not mean the man who owns property; I mean the man who pays rent. The men who pay rent are the real taxpayers. It used to be the rule that one month's rent should be equal to one week's pay; in other words, only one-quarter of a man's earnings should pay for rent. But taxes have increased, valuations have increased, and the result to-day is that he is paying from one-third to one-half.

Now, we do not want to do anything here that will allow the city government to branch out into various kinds of business. It seems to me that we should adopt the amendment proposed by the gentleman from Boston in the third division (Mr. Lomasney). That would be regarded as an emergency measure. It could go onto the ballot this fall and be accepted by the people, and then the cities and towns of the Commonwealth could get after these Shylocks who take advantage of the public in times of distress.

Mr. LOMASNEY: I offer this amendment for the purpose of meeting the present situation. We must realize that every interest in the Commonwealth has to be protected. The laboring man is the backbone of the Commonwealth. Capital and labor should pull together. We want no constitutional amendment that would put class against class; we want something that is fair and square. It seems to me the trouble with some of the other gentlemen here is that they have not had experience in law-making. They may be good lawyers in construing statutes but not in preparing them. That is an entirely different proposition. Any man who has had legislative experience knows that many of the best lawyers cannot draw up a statute. It requires experts to draw statutes, and they do it, and receive, and are entitled to receive, a large amount of money for doing that line of special legal work. When you see a lawyer like the gentleman from Brookline (Mr. Anderson) presenting a constitutional amendment like

the one he has submitted here, we must defeat it or we shall have a Constitution that will fill pages and volumes with immaterial matters and details that should be left to the Legislature.

What does the amendment do that I have the honor to present? It reads as follows:

> The maintenance, at reasonable rates, of a sufficient supply of food and other common necessaries of life, and of shelter, during times of war, emergency or distress, is a public function, and it shall be the duty of the Commonwealth and of the cities and towns therein to take and to provide the same for their inhabitants in such manner as the Legislature shall determine.

The Chair will note that I have had those words that were put in there unintentionally, taken out.

Now, Mr. President, the labor people will be satisfied with this amendment. The laborers of this Commonwealth are more interested than the capitalists. Why? Because they want their rights protected. They cannot leave the State; they are located here. They are satisfied with this amendment. I venture the assertion that most of them will vote for it. Why? Because it provides that the Legislature shall be the one that finally shall pass on all the details.

All the talk by these lawyers, reading these different articles now in the Constitution, — that are as old as the book, — is only confusing us. If we act under this amendment, or if the Legislature acts, it must proceed under the provisions of Article X of the Constitution. We do not repeal that article. What does that say?

> Whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor.

This amendment cannot take away property rights. Then look at Article XV, and you will find that it says:

> In all controversies concerning property, and in all suits between two or more persons, etc., —

You have a jury trial and all your rights are protected. Why bring these articles and words in here to befog the issue? Pass this amendment; it will be ratified by the people. Why? Because they will not be alarmed at the cost of taking warehouses, canneries, beaneries, docks and all these other matters that you are now trying to put into our Constitution. Everybody in business will ask: "What does this mean?" Why, they will be aroused and say: "My business is liable to go to pieces." The amendment favored by the gentleman from Brookline (Mr. Anderson) permits the worst kind of paternalism. Who can compete against the State? If we are going to adopt socialism, let it start in the National law. I submit that the amendment I have the honor to offer here is one that leaves it to the Legislature; and every fair-minded man, notwithstanding what the people have been saying here, will trust the Legislature in times of emergency, war or distress, to see that every citizen, no matter how humble, is protected.

Mr. President, our laws now provide for the giving of charity. There are thousands of men in this State, decent mechanics, poor people, who do not want charity. They will not ask it until they give up the last cent. This simply allows the Legislature to provide that in times like the present men can come forward and get, at a fair market rate, the necessaries of life. That is all. Instead of getting it for charity, they purchase at the fair market value; not some ex-

treme price to the ice trust, the coal trust, the milk trust or some other trust. That seems to me to be the entire proposition, and that is the reason I move to have it voted on first, so that we may have a clean-cut issue between that and the committee's report.

In other words, I object to allowing the committee to come in and steer this matter, so they can vote first on the amendment they favor. I think this Convention should vote for the best proposition and should give every man a chance to have his say. Now, sir, I understand from what the gentleman says that his committee heard a great many people yesterday. I am finding no fault. They went into session without me. I wonder why I was not invited to their conference.

Mr. ANDERSON of Brookline: The gentleman from Boston (Mr. Lomasney) is in error in thinking that the committee invited any one. It considered whether it would be possible, without encroaching upon the functions of the Convention, to ask members of the Convention to come before the committee, and no one was asked. To the best of my recollection, no member outside the committee itself appeared there.

Mr. LOMASNEY: Then, Mr. President, it seems to me the committee did not do its duty. [Laughter.] I should like to know how you ever expect to get anywhere, if you call in two or three men who think your way, and leave out the people who have some ideas and are not afraid of expressing them. What did the gentleman say the first thing this morning? That he was assured, practically assured, that, with the motion he was about to make, everything in the way of opposition would be swept away, if he would support Mr. Clapp's amendment. Did not the gentleman say that? Now, who assured him? I corrected him at the time. I said: "The gentleman certainly is not speaking for me."

Now, this is a very serious matter. We must realize, as I said yesterday, that property and labor should go hand in hand. Property has its rights; so has labor. The real estate of this city is visible. It cannot be carried away to safety deposit boxes. Its owners are not like men who put their money in big life insurance policies or stocks or bonds. Property in this city now pays only $2\frac{1}{2}$ to 3 per cent. We have times of war here. We do not know how high taxes are going. We have leases made on some of our largest buildings. They were made in normal times, and now the owners find their taxes are increasing by leaps and bounds. Why should we commit the Commonwealth to a thousand and one of these schemes without realizing that we do not know just where we are? Why not proceed cautiously? I have talked longer than I intended, and I hope the motion I have the honor to offer will prevail.

Mr. DUTCH of Winchester: We are about to pass this proposal to another reading without any apparent further debate. I made the motion which I did, as I explained at that time, because I desired to present a clear-cut issue as to whether this proposition should be confined to an emergency proposition or whether it should remain as the committee proposed, a standing declaration in favor of State and municipal socialism and trading. Since that time the Convention has taken a sober second thought, with the result, most gratifying naturally to me, that the committee now come in with a proposal which is tied up to an emergency state of affairs, and the proposal of the gentle-

man from Boston who has just spoken (Mr. Lomasney) is also one for times of distress and emergency.

As I intimated yesterday, it seemed to me that the discussion had pointed out that there might be danger in accepting the phrase "public exigencies" as sufficiently confining this matter to an emergency. For that reason I am inclined to believe this morning that the best form in which this proposition has been put is the form of the gentleman from Boston in the third division (Mr. Lomasney), and that I shall vote for that form. But as each of these propositions now entirely incorporates the purpose of my amendment, and if either one is passed, that simple purpose which is all I dared hope for at that time will be accomplished, I ask unanimous consent to withdraw all the amendments under my name in the calendar.

Mr. Kneil of Westfield: I have offered an amendment, printed in the Orders of the Day, providing for what in the law is called consequential damages, whereby, in case this provision becomes a constitutional law, if the State should set up a rival establishment, it should pay for the real absolute damage done to a man whose business was crushed out, but that it should be left to the Legislature in each case to say whether there was damage and to provide for it. The amendment offered by the gentleman from Boston (Mr. Lomasney) which we have under discussion meets that proposition; it absolutely satisfies me in that respect; that is, it allows the Legislature to provide in any case for just damage, actual damage or real damage. I had other objections to the resolution as reported from the committee. They are all satisfied in my mind by the proposal introduced by the gentleman from Boston. It seems to me an inspiration, if the Convention will pardon the word, — a carefully drafted resolution, and a happy and swift surcease of all our troubles.

Mr. Loring of Beverly: I introduced an amendment, but in view of the amendment introduced by the gentleman from Boston in the third division I ask unanimous consent to withdraw it. I think his is better drawn and a more effective measure than mine.

Mr. Lowe of Fitchburg: I introduced an amendment yesterday, which I should like unanimous consent to have withdrawn.

Mr. Dennis D. Driscoll of Boston: I should like to ask a question through the Chair, more especially with relation to a statement made by some of these well educated attorneys, as to whether the working people are more especially affiliated with organized labor. We are here representing no political party; we are here as delegates to this Convention and in the best interests of amending this Constitution, so that the judiciary in the future may make a decision like the Supreme Judicial Court made during the coal strike, when we wanted the city to buy coal and sell to the people. I should like to inquire of the chairman of the committee, or the gentleman who signed that report (Mr. Clapp), whether his amendment, if adopted, would allow the taking of clothes, underwear and shoes, as I believe the amendment of the delegate from Boston allows that, whereas the amendment offered by the gentleman on my left (Mr. Clapp) does not. We are strongly in favor of the amendment offered by the delegate from Boston as a solution of the problem in the interest of the people.

Mr. Anderson of Brookline: In response to the inquiry of the

gentleman, I have to say that the other necessaries of life, like clothing, shoes, etc., are not included in the Clapp amendment; but I also, now that I am on my feet, desire to direct the attention of the Convention to the radical difference between the two propositions, that is, the committee's proposition and that of the delegate from Boston (Mr. Lomasney). Instead of taking the well interpreted language "whenever the public exigencies require," we have "during times of war, emergency or distress." Instead of having power, as provided in the Clapp amendment, to provide needed distribution facilities, for preserving, storing, collecting, converting, etc., the necessaries of life, food and fuel, we have in the so-called Lomasney amendment a broad, absolutely unlimited power in the Legislature, and in cities and towns, limited, however, to the times of war, emergency or distress. This Convention is about to vote, when it votes on that amendment, on a proposition of a constitutional grant to cities and towns to provide food and other common necessaries of life, shelter, and so on, in any such manner as the Legislature may provide in times of "emergency,"— whatever an emergency may be.

If you are going to pass that amendment simply because it is shorter but not narrower than the other, strike it out and take the amendment of the gentleman from Waltham (Mr. Luce), which provides that "The General Court may determine what is a public use." Otherwise you have thwarted entirely the purpose of enlarging distribution facilities as the public exigencies require. You have given to the Commonwealth, and to the cities and towns, a power without limit, whenever there is war, emergency or distress, whatever "emergency" may mean, a power impossible of any accurate interpretation, unlimited under one interpretation, so narrow as to be quite useless under another possible interpretation. Now, if that is to be the result of two weeks of debate and of careful and conscientious work of the committee, from which we have endeavored to bring out a composite and a compromise judgment, — it offers very little incentive to that kind of effort by any other committee.

Mr. PARKER of Lancaster: The interesting and incisive debate upon the several amendments proposed to the original report of the committee has proceeded now so far that the expressions and opinions from various delegates to the Convention have disclosed what I think is now manifest, — that either the compromise report submitted by the committee and presented under the leadership of its able chairman, or the amendment proposed by the honorable delegate from Boston in the third division (Mr. Lomasney), will be accepted. I think, therefore, the question for the Convention to decide is which of these two alternatives shall be accepted; one or the other is inevitable.

A few brief words of further analysis as to the difference between these two measures may aid in the judgment of the Convention. Each of these two measures provides that these new powers to be conferred upon the Legislature, if this constitutional amendment is adopted, are to be exercised only in the event of a public exigency, and only when legislative discretion so decrees. Yet there is a difference between these two amendments which I think significant. The control by admonitory words, — for I think either provision can operate only as an admonition to the Legislature, they being entirely and exclusively the judges as to whether such an emergency exists as to war-

rant the exercise of the proposed power. Under the provisions embodied in the amendment of the gentleman from Boston, I think, as the chairman of the committee has pointed out, there may be confusion with respect to the power of the Legislature that will not obtain if the committee's compromise report be adopted, because the committee report adopts the phrase "public exigency" heretofore appearing in our Constitution repeatedly, the subject of judicial adjudication, its definition and significance being already well and indisputably determined. The limiting phrase upon which legislative power is to depend as presented in the amendment of the gentleman from Boston is that the power shall be exercised during times of war. In my opinion a time of war should not be the only condition upon which these new powers may be exercised. War unhappily already is upon us. There are, however, other conditions, financial, social or industrial, those of transportation, or of trade control, now imminent or which may arise in the future, creating public distress wholly apart from the dreaded results of war; such conditions might be due to unlawful acts or to combinations or conspiracies, or to conditions due to mere force of circumstances without the intervention of unlawful acts. In such events the Legislature should be empowered to take necessaries of life by right of eminent domain and provide for their distribution, as the urgent necessities of the people might demand.

The phrase of the amendment proposed by the gentleman from Boston is, "emergency or distress." It is to be noted that "emergency" is not further qualified by the addition of the term "public emergency"— only in case of a public emergency should the peremptory powers proposed be exercised. Further the amendment of the gentleman from Boston might be construed to apply to a purely local emergency, not of such commanding or portentous significance as to require consideration by the Legislature as a public emergency affecting all communities.

Mr. LOMASNEY: Does not this amendment allow the Legislature to pass upon that question?

Mr. PARKER: Yes, sir.

Mr. LOMASNEY: Does the gentleman think the Legislature would act on a private matter?

Mr. PARKER: The test of conditions upon which the Legislature should be authorized to act, in my opinion, should be limited plainly to the requirements of a public emergency. It might well happen that the Legislature would either be confused as to the significance of this amendment or be overborne by suggestions of a local emergency, which they might be persuaded to think to be within the somewhat confused phrase of the amendment proposed by the gentleman from Boston. The emergency should be a public emergency, and the Legislature should not, in my opinion, be permitted to act, to grant or delegate these new and possibly dangerous powers, except under a condition of public distress so universal, so menacing, so insistent as to make it clear that the Legislature is justified in making its final declaration that a public emergency does exist.

Furthermore, Mr. President, the phrase "distress" is one of very far-reaching significance, subject to many constructions and to difficulties and confusion in interpretation; while the use of the phrase "public emergency", which already has been interpreted by the court

with definite, plain and indisputable significance, will be a restraint and guide to the Legislature with respect to the exercise of their powers, behind which limitations they would find protection for their action against the appeals of local communities confronted by difficulties which might be very disturbing locally, but still not presenting the menacing portent of a public exigency.

Now, sir, I believe that the phrase "public exigency" alone is broad enough in application, wide enough in its interpretation, to permit the exercise of these proposed powers where, but only where, there is a distress rising to such a degree of import or significance as to fall within the plain interpretation or significance of the words "public exigency." In other words, I believe, sir, that all that my honorable friend, the delegate from Boston, seeks to secure by his phraseology is safeguarded and provided for in the compromise measure presented by the committee. Yet the adoption of his particular phraseology I believe to menace, by possible confusion of interpretation, the very end that he seeks.

I therefore hope, sir, that the compromise report of the committee may be adopted, it being an instructive example of the benefits to this Convention, derived from the exact and searching analysis which comes from the consideration and review of amendments to a fundamental or a radical measure like this. And I think, sir, that instead of being subject to the remotest criticism, the action of the gentlemen of this committee who now have reported to us the compromise or amended measure should be highly commended, for it shows that they have considered this subject deeply, studying it far more profoundly than we have. They now come before their colleagues in this Convention, without arrogance or any pride of opinion, without the prejudices born of their own more or less exclusive study of this proposition, but, enlightened by the suggestions which have been made in argument upon the floor, they have adopted and have reported a measure which I believe eliminates all the fundamental objections to the original report and provides a measure which will operate under every condition or every circumstance now about us or that we can foresee, and which will afford a safe protection to the people of this Commonwealth in future days when they may be confronted with problems not yet within our vision. I hope the committee report will be adopted. [Applause.]

Mr. Quincy of Boston: I desire to ask leave to withdraw the amendments printed under my name in the calendar, the substance of which is incorporated in the substitutes.

Mr. Montague of Boston: I ask unanimous consent to withdraw the amendment printed under my name in the calendar.

Mr. Richardson of Newton: I wish to ask unanimous consent to withdraw all of the amendments printed under my name in the calendar. In so doing I wish to echo the remarks of the delegate from Lancaster (Mr. Parker), and to say that it seems to me that the substitute Clapp amendment, if it may be so designated, is a businesslike and sensible way of approaching this subject, and that it covers the ground safely and at the same time more comprehensively than does the amendment offered by the gentleman from Boston (Mr. Lomasney). Believing that the Clapp amendment is stated in rather a better way than anything that has been presented, I shall vote for the Clapp

amendment in preference. If the Clapp amendment is defeated, I shall vote for the Lomasney amendment. But, Mr. President, it does seem to me that the work of this committee ought at least to be given the recognition of the first test vote on this matter, and I hope that that view may prevail.

Mr. Blackmur of Quincy: I should like to make an inquiry of the chairman of the committee. In the first place, I desire to call his attention to the fact that in the amendment offered by the gentleman from the third division (Mr. Lomasney) there is no language providing for compensation or payment. And I call his attention also to the fact that the word "take" is inserted in the next to the last line. Now, I desire to ask him what import the language as used in that proposed amendment would have, and particularly I call his attention to the police power, — the interpretation which might be given under the police power, — and ask him for his opinion regarding it.

Mr. Anderson of Brookline: I should not dare to be dogmatic as to the interpretation that might be put on those words by the court. But I do say that there would be serious danger that if, in time of war or distress, the Commonwealth, or a city or town, went out and seized property to meet "distress" or "emergency" it would be held to be an exercise of the police power and that therefore no payment would be required. I say that with the more assurance in view of the fact that when I had used in the draft which I had prepared originally the stereotyped words "take by purchase or otherwise" (which I thought plainly signified eminent domain and the resulting obligation to pay reasonable compensation therefor) the delegate from Arlington was not quite content and asked us to insert, so that there should be no shadow of doubt, the words "paying reasonable compensation therefor". And those words were put in there in order to make it certain that when the Commonwealth or any political division thereof took something for the public needs it was taking it by eminent domain and paying for it; not "taking" it, as the government may dynamite our houses to stop a conflagration when there is no obligation to pay for them. Such taking is under the police power.

So, then, I say again that the question of the gentleman from Quincy indicates ground for doubt, — although I have no hesitation in paying great tribute to the inspired utterances and the sudden exhibition of statesmanship of the gentleman of the third division, who knows a great deal more in five minutes than all of us lawyers who have worked over this thing two months, — whether four lines of inspired statesmanship are as safe as the results worked out by the arduous efforts of lawyers after two months' debate with the help of the books.

Mr. Churchill of Amherst: I should like to ask the gentleman from Brookline (Mr. Anderson) to explain why the civil service provision has been dropped from this amendment. That is, why the amendment of the gentleman from Lexington containing the provision that "All offices and positions created in connection with any undertakings under this section shall be filled in accordance with the laws and regulations governing the classified civil service" has been dropped.

Mr. Anderson: I am very glad to answer that question. It was dropped in order to get a unanimous report and in deference to the objections to its insertion on the part of a member of that wise body of which the gentleman from Amherst is also a member, — the Sen-

ate of the Commonwealth. More seriously, the reason it was omitted was that we thought that was a matter proper for legislation and not for the Constitution; there was doubt also as to whether the civil service is now sufficiently well established so that we wanted to recognize it in the Constitution. Personally I was in favor of it. But this measure as we reported it is a compromise measure. We have shown, I think, some reasonable deference to the views of others, and neither dogmatism nor egotism on the part of any one of us on the committee.

Mr. FRENCH of Randolph: I should like to ask the chairman of the committee with regard to the amendment of the delegate from Lexington, — whether or not he thinks the words "whenever public exigency requires, the Legislature", etc., mean anything more than the equivalent of "whenever the Legislature sees fit, it may require"? In other words, whether those words do not entirely remove from the measure every element of emergency? It seems to me clearly that they do.

Mr. ANDERSON: I assume that the member from Randolph was not present when I stated my views this morning. I adopt the views expressed by the delegate from Fall River. I adopt also the views expressed a few moments ago by the ex-Attorney-General, the delegate from Lancaster (Mr. Parker), that these words are admonitory only; but they are valuable as an admonition, and therefore are desired by a great many of the representatives in this Convention; but they are not prohibitory. That is my view of them.

Mr. THELLER of New Bedford: In the measure proposed by the committee, section two, the phrase "Whenever the public exigencies require" is not included in the compromise amendment. The phrase "Whenever the public exigencies require", I understand, covers paragraph three, so that it is only when public exigencies require that the city, town or State may establish, maintain and operate. I want to ask the gentleman whether or not the committee has taken into consideration that this does not provide for any foresight. That is, in times of emergency it will be necessary for the State or for the city to at once establish, maintain and operate. And in those words I do not think the implication lies that the State can take over at that time. It must build, establish, maintain and operate suddenly. Now, it seems to me that the experience of the war, in other countries at least, has demonstrated that in times of emergency it is almost impossible to do this constructive work suddenly. I want to ask if this was taken into consideration and whether or not in the compromise amendment we do not immediately throw the city or the State into private enterprise when we might provide, as in the original proposition of the committee, that the city or town or State might by foresight anticipate a crisis and establish and operate these agencies.

Mr. ANDERSON: I am not quite sure that I get the exact significance of the gentleman's question. But answering it as I understand it, it is true that in the compromise amendment appearing under the name of the gentleman from Lexington, the words "Whenever the public exigencies require" condition and limit grammatically all that follows. It is true that in section two of the one given under my name, at the top of page 4, those words were omitted. It was thought by a majority of the committee that it was just as well to have those words apply

to the entire list of powers proposed to be given; I yielded my own preference for my own draft in deference to the views of others.

But answering further the question, I do not believe that the words "public exigencies" can be construed so narrowly as to prevent the Commonwealth from exercising reasonable foresight if it anticipates trouble. I do not believe you must wait, — as was pointed out by the delegate from Lancaster who has just come into the hall (Mr. Parker), — until there is actual war or distress; otherwise I should not have agreed to the compromise proposition. I think that the compromise proposition is defective in that it ought to provide for "other necessaries." But I yielded my personal judgment on that point. I do not think it is necessary to put in the words "Whenever the public exigencies require", conditioning thus the powers given under section two of the draft I made. But I yielded my views on that point also. I yielded these points because I think the substance of the absolutely necessary powers is granted under Mr. Clapp's amendment and because his draft commanded the support of other people in whose judgment I have confidence.

Mr. Bryant of Milton: I think that the issue between these resolutions ought to be perfectly clear to the Convention, but I am not sure that it is. There may be minor defects in the amendment of the gentleman from Boston, though I have not noticed any myself. But the real issue between his amendment and the proposed amendment of the committee is: Do you want an emergency provision or do you want a general provision that can be acted upon by the Legislature at any time whether or not an emergency exists?

I must take issue with the learned gentlemen of the law who have tried to tell the Convention that the phrase "Whenever the public exigencies require" is the same as the phrase in the amendment of the gentleman from Boston where he says "during times of war, emergency or distress". They are not the same. And I would not take issue with these gentlemen if I did not have behind me a superior authority, to wit, the Supreme Judicial Court of Massachusetts. It often has been stated here that the word "exigency" has been defined by our Supreme Judicial Court. And so it has been defined. And I shall read you the definition. Among other numerous cases it is in Revere Water Co. *v.* Winthrop, 192 Mass. 455, 460, and the definition is this: The phrase is equivalent to "whether the public interest would be served." That is what "public exigency" means, — whether the public interest would be served.

Now, read the amendment of the committee in the light of those words and see how the amendment reads. It will read this way: "Whenever the public interest would be served, the Legislature may authorize the Commonwealth to provide shelter", etc.; or, "The Governor, whenever the public interest would be served." If that is the kind of a socialistic proposition that you want to put before the people, do it; but know that it is not an emergency provision, it is a socialistic provision pure and simple.

Now, we have heard a great deal about the great learning of the committee. Once in a while a man who has not studied for months, who has not filled his mind full of different contingencies, who has not gone around from one amending delegate to another to try to get together some kind of a composite hash that everybody will like, —

sometimes an inspiration strikes a member of this Convention, and I congratulate the member from Boston in the third division (Mr. Lomasney) for seizing the spirit of the times and embodying it in these five lines that lie before us, and I hope his amendment will be adopted. [Applause.]

Mr. BROWN of Brockton: I should like to ask this question of the attorney who is in favor, as I understand it, of the amendment offered by Mr. Lomasney. I want to discover if, under that amendment, the Commonwealth may exercise this power: May the Commonwealth, because it discovers that the price, for instance, of food in the shape of cattle is too high, recognize that the price is either because of the money volume related to the demand for and supply of cattle or because the supply of either cattle or money is controlled by a monopoly? Recognizing that the supply of cattle is controlled by a monopoly, may the Commonwealth, under the pending amendment, contract with the farmer so that he may go into the business, as an individual, of raising cattle at a guaranteed price that will insure a profit, so that the cattle may be furnished to us at the proper price because the supply is increased? You have thus broken down the monopoly price which controls the supply because the guarantee has increased the supply which monopoly does not control.

Now, I want that power to increase supply to be somewhere; I want to find if it is in the resolution of the chairman of the committee. For I think the Commonwealth has got to recognize as a necessity that it must increase the supply in order to break down the price. And the price to-day is the result of setting aside the natural law of supply and demand; taking away the food from the middleman to sell over again eliminates only the middleman's profit; but the Commonwealth cannot fix a reasonable price unless the Commonwealth goes into the business of raising by guarantee of cost and profit. Now, can we do that under your amendment?

Mr. BRYANT: I am not sure that I entirely understand the question of the gentleman from Brockton. But under the power to maintain a sufficient supply of food in the event of war, emergency or distress, I should suppose it was very clear that the Legislature could take means of having the food supply increased by one method or another. What the detail would be, would be matter for the Legislature to determine.

Mr. BROWN: Then we will come to that word "distress." Is that word broad enough from the legal standpoint so that the Legislature of Massachusetts may at any time feel that the inhabitants are in distress by not obtaining their food at a price at which they could obtain it if the farmers here went into the business of raising cattle at cost, — to supply the people at what I call reasonable cost?

Mr. BRYANT: Of course I offer my opinion with hesitation. It is only my personal opinion, and I have not thought of it, perhaps, exactly along the lines that the gentleman asks. But I should assume that "distress" meant some kind of a public distress, not a private distress; and I should assume without hesitation that whether or not the distress existed, whether the emergency existed, would be a matter to be determined by the Legislature. There is no absolute prohibition in this amendment, — I agree to that. The matter comes up to the Legislature to determine whether the distress or whether the emer-

gency exists. But they have that moral restraint on them, — that they ought not to pass laws except in the exercise of this emergency power, — and if they very clearly and absolutely went outside of it the court would stop them. But as a general proposition, any law to-day for public exigency is a matter to be determined by the Legislature, so that whether the condition of emergency exists would be a matter to be determined also by the Legislature.

And if I may refer to this for a moment, we have the word "emergency" in another matter that is now pending before us — I mean the initiative and referendum. We are using that word "emergency". And that, I suppose, is in the discretion of the Legislature; but nobody yet has criticized the word in that connection, and the use of the word in this connection would be very similar to it, in my opinion.

Mr. Lowell of Newton: I hope that the Convention will vote for the measure, the resolution introduced by the gentleman who sits behind me in this Convention (Mr. Lomasney), and I want to point out what seems to me the difference between the two.

In the first place, the gentleman from Boston has included, in the things which may be provided, articles of clothing. Now, if we limit the measure to times of emergency and distress, I think those should be included; therefore I think that is one advantage his resolution has over the other.

But the great difference is this: You will see he uses the words "During times of war, emergency or distress." That brings clearly to the mind that the times during which this thing may be done are limited. It appears clearly from this that you are to be allowed to go into this kind of business only at limited times, showing on the face of it that you are not permitting the Commonwealth to purchase food or go into the business for all time.

There is nothing of that in the amendment which has now been agreed upon by the committee. It has been very well pointed out by the gentleman from Milton (Mr. Bryant) that the words "Whenever the public exigencies require" mean merely that the Legislature may say when they think it is for the benefit of the Commonwealth that the Commonwealth should go into the milk business, for instance. There is nothing in this committee amendment, as I see it, which could prevent the Commonwealth going into the milk business. Personally I do not believe in that. I think we should limit it, as it clearly is limited in the resolution of the gentleman who sits behind me, to times of war or distress, and we should say clearly, as he says clearly in his resolution, that the thing is not going to be started and kept going but is to be used only during the limited time.

The further proposition is this: In my judgment the people of this Commonwealth never would adopt the amendment offered by the committee if they thought, as I do, that it would allow the Commonwealth to go into these socialistic schemes. So that I say that the resolution offered by the gentleman from Boston is much safer and also much more likely to be adopted by the people.

Mr. Edwin U. Curtis of Boston: I want to say one word in answer to the chairman of this committee. He stated that the resolution of the gentleman from ward 5 (Mr. Lomasney) allows cities and towns to take by right of eminent domain. I want to call his attention to the fact —

Mr. Anderson of Brookline: I will correct the gentleman. I stated nothing of the kind. I stated that there was in the proposition of the gentleman from the third division a constitutional recognition of a duty in municipalities to take and to provide for these things, and that it was open to grave doubt whether it was eminent domain or was the exercise of the police power. But I stated expressly that it was a constitutional recognition of a municipal power that never before has been contemplated either in the existing Constitution or in anything that has been proposed in this Convention.

Mr. Curtis: What I desired to say was this: That the gentleman knows just as well as I know that if the Constitution allows the Commonwealth to take by right of eminent domain that the Legislature can delegate that power to any city or town. And I believe they have no more power under this resolution than they have now.

Now, Mr. President, in regard to the question of the police power of which he speaks. The police power is a power for regulation, and in the exercise of that power the property of an individual occasionally is injured; for which he gets no compensation. But you cannot take by right of eminent domain through the method provided for here unless you pay for the taking. All you have to read are the last words in the tenth article of the Constitution, quoted yesterday by the gentleman from Fall River: "And whenever the public exigencies require that the property of an individual should be appropriated to public uses, he shall receive a reasonable compensation therefor." So that there is no danger of anybody's property being taken without its being paid for. And, gentlemen, if there was that danger, I do not believe that the Commonwealth of Massachusetts ever would take advantage of, or ever would take, anybody's property without paying for it.

Now, I want to say just one more word. I have an amendment in here under my name which I ask unanimous consent to withdraw. And I withdraw it because I believe that the amendment offered by the gentleman from ward 5 is the best before us, and is the one I hope this Convention will adopt. I think it is better than the one offered by my friend on the left.

Mr. Hobbs of Worcester: The committee seems to have been so fortunate or unfortunate as to have arrayed against it not only the ultra-conservatives but the ultra-radicals. We have not only the labor men whom the gentleman from Boston has so confidently promised, but also every one of the gentlemen who have denounced the proposition of the committee as a socialistic proposition. In other words, we have so successfully steered the middle course that we have come between the radicals and the conservatives, and both of them seem to have united on a fairly simple proposition. That is an extraordinary result. It hardly can be that the two sides take the same view of the amendment of the gentleman from Boston (Mr. Lomasney), or this most delightful harmony would not long continue. I cannot think that the radical element would vote for the amendment offered by the gentleman from Boston if they adopted the reasoning of some of the gentlemen who have spoken in favor of it. That is to say, if they consider that the language of the gentleman from Boston makes it a strict emergency measure, so that except in time of actual need no action can be taken by the State, no action contemplating the future existence of an emergency, and no action after the actual ex-

piration of the emergency, then I hardly can think that they would view that amendment with quite so much complacency. On the other hand, if the gentlemen who have spoken in favor of it and who have been so insistent that the State should not engage in any business looking toward State socialism, had contemplated those words as meaning, as I think they do, that in any condition where the Legislature can say that distress exists, — and distress is a fairly broad word, — then it not only may but must go into business, they in their turn would hardly look upon it with so much complacency. And yet that is just exactly what the resolution of the gentleman from Boston says. It is not only the right of the Commonwealth and the cities and towns to engage in business under that, but it is their actual duty, and there is no reason why the Legislature, if such be its desire, cannot say at any time that distress exists. For the last seven years the Legislature has heard very little except about the high cost of living, and I am fully prepared to agree that there has been considerable reason in that complaint. I do not think that the Legislature could say fairly that at any time during those seven years there was not distress in the Commonwealth, and if so, under this resolution it is not only the privilege of the Legislature but it is its actual duty to set this scheme into operation. That is the language used by the gentleman from Boston:

> It shall be the duty of the Commonwealth and of the cities and towns thereof to take and provide the same for their inhabitants in such manner as the Legislature shall determine.

Now as to the question of eminent domain. It is fairly obvious, I think, that the resolution of the gentleman from Boston distinctly contemplates that cities and towns shall have the power to take food-stuffs and such other necessaries of life as may be necessary. That matter was considered pretty carefully by the committee and the reasons why the power of taking was defined in our resolution to be in the Commonwealth rested on considerations of that nature. There were propositions before us which desired to give cities and towns the fullest power to go into business, to take, to seize property, in fact, to do everything that they might consider necessary at any time they pleased.

Now consider the situation if a city like Boston, vested by the Legislature or vested by the Constitutional amendment with power to seize property, should at once seize all the food-stuffs within its limits. Would not that create a most disastrous condition in the communities around it that rely upon Boston for their supplies of food? The same thing would be true of other places in the Commonwealth around which there are a number of communities which depend upon them as centers of supply of every sort; so that if you give cities and towns this power or if you give the Legislature the right to give to cities and towns this power, you are running the risk of giving a city or town that happens to occupy a favorable strategical position the right not only to provide for its own inhabitants but to starve all its neighbors. And I think if the amendment of the gentleman from Boston is adopted some limitation certainly ought to be inserted defining the right of seizing property to be vested in the Commonwealth rather than in cities and towns; and in that respect at least I think the committee amendment is the preferable one.

Doubtless what the gentleman from Boston in the first division (Mr. Quincy) says is true, that the Legislature could delegate its functions. But if we, in drafting this amendment, make an expression of opinion to the effect that the right to take property should be vested in the Commonwealth, then the cities and towns cannot take the property, except by express legislative delegation, and the difference, I think, between the two resolutions lies in this, — that in the amendment of the gentleman from Boston you have recognized the duty of cities and towns to take property, and in the other you have recognized that duty as resting in the Commonwealth and not in the cities and towns.

Now both of these amendments look toward the same direction. They are framed to meet the same condition and the distance they are apart is not so very great. I have attempted to designate some of the differences and some of the reasons for the committee's adopting carefully framed language to cover what we have desired to cover. The language in the amendment offered by the gentleman from Boston is of a very broad general nature and of a nature that I think meets the views of many who desire to see the Constitution of the Commonwealth succinct and general in its language rather than specific and detailed. But it is with some surprise that I find so many gentlemen who have complained of the committee for bringing in a socialistic proposition who are prepared to stand for a resolution which vests in the Legislature, according to their own statement, power to declare at any time that emergency or distress exists, and in addition the specific duty to vest not only the Commonwealth but the cities and towns with the right to go into business and imposes the explicit duty on the Commonwealth and the cities and towns to take advantage of that power.

Mr. Tatman of Worcester: It seems to me that a very large majority of the delegates here are very much impressed with one of the features of the amendment offered by the gentleman from Boston. That is this very specific restriction of the power conferred to times of emergency. I am sure we have been impressed by the arguments of the gentleman from Milton who felt that the language employed by the committee in its advocacy of Mr. Clapp's amendment simply confers upon the Legislature the power to do these things whenever it shall see fit, and that the word "exigency" is not the equivalent of "emergency" by any means. I do not think that the temper of this Convention is such as to agree to the whole amendment proposed by the gentleman from Boston. Nor do I think that the Convention wishes to commit itself to the support of this resolution except that it be restricted to times of emergency. To be sure, any language which is used will be only admonitory. The language used in the amendment offered by the gentleman from Boston, so far as it confers any powers, is precisely the same as that in the resolution now being supported by the committee, because that says in the same language, — "Whenever the public exigencies require." The language which goes before that is only admonitory. But I think that is important, and I therefore move an amendment to the amendment proposed by the gentleman from Lexington (Mr. Clapp) to insert after the word "whenever," in line 1, the words "during times of war, emergency or distress."

Mr. Balch of Boston: The gentleman has anticipated a motion

which I have here. I wish to ask him, however, why the same amendment is not equally necessary in the first section.

Mr. TATMAN: I do not understand that there is more than one section to the amendment offered by the gentleman from Lexington.

Mr. BALCH: I understood, Mr. President, that Mr. Anderson had accepted in substitution the Clapp amendment for the second section of his amendment, so that what we had before us was section 1 by Mr. Anderson plus section 2 by Mr. Clapp.

Mr. TATMAN: I think there is no doubt that the amendment offered by the gentleman from Lexington is in substitution for the two sections as proposed by the committee. Now, what my amendment does is to adopt the language of the gentleman from Boston (Mr. Lomasney) and make this whole resolution apply only during times of war, emergency or distress. Those words are only admonitory and it is always for the Legislature to determine when it shall exercise this power. But those specific words admonish them not to exercise that power except during such times.

Mr. LOMASNEY: It is with some gratification that I find the former Attorney-General, whose ability we recognize, has to admit that only one word was necessary to perfect the amendment, his suggestion being to put the word "public" before the word "emergency." I gladly will insert that in the amendment because that puts in the same words that are in the Constitution, — "public exigency; public emergency." I am willing to accept that change in the amendment I have offered because I have no desire to have it apply to private schemes or private purposes or private individuals. We are working here for the public interest.

The gentleman from Brookline in charge of the measure (Mr. Anderson) when he made a statement to the Convention spoke about my egotism. The gentlemen of this body who have served with us know who is the turkey-cock that goes swinging through the chamber. I do not think there is any of that in me. I have no swelled head. Any allusion to "inspired statesmanship" was entirely unnecessary. My record in the Legislature is public property. It has been my privilege, sir, to contribute something constructive to the city where I was born, not like the gentleman who almost always has been connected with destructive legislation. I want the gentleman to understand that I do not consider him or any one else when I believe I am doing what is right. This amendment was not drawn by me alone; I talked with several men around this building, — the gentlemen who have been a part of the Legislature for years drawing up these amendments. We got this one in shape, and in my opinion it is a good amendment. I would not like to say that except that somebody else had a hand in drawing it, but I believe we have an amendment here which anybody who is fair will support, notwithstanding the criticism of these lawyers and Attorneys-General. "Put in the word 'public,'" says a former Attorney-General. Of course, I am perfectly willing to do that. My answer to him indicated that I did not think it was necessary; but if you think it is necessary, put it in.

Now, Mr. President, what else can be said about this matter? It all comes down to what? Certain things can be done. The amendment reads: "As the Legislature shall determine." Now, Mr. President, if we put this amendment through and it is accepted by the

people, the Legislature coming in next year will proceed to do something of a constructive character for the people of Massachusetts; to bring labor and capital together, and show the laboring man that, in times of emergency, distress or war, the great government he is living with is part and parcel of himself and that it wants to help him. That is the point here, because a good many whom I know do not want to become paupers or ask for public charity.

I hope, sir, the amendment that I have offered will be put forward and be voted on first, and I shall be glad to accept the amendment suggested by the gentleman from Lancaster, the former Attorney-General (Mr. Parker), by adding the word "public." And then we shall have an amendment that, in my opinion, will be acceptable to the people.

Now, about this question of taking men's property. Why, I am surprised that anybody argues in this Commonwealth that property can be seized without paying for it. The Constitution says that whenever the public necessity requires that private property be taken the owner shall receive compensation therefor. Article X of the Bill of Rights says: "And whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor." We are operating under that article. And Article XV guarantees the right to trial by jury. Where is there any question about that? Have we been going on for years seizing property and doing these things without right? Of course we have not. We do not repeal these articles. I am suspicious of some of these other amendments, — I do not know just what they mean. But he who runs may read this amendment. It is frank, open, square and fair; it puts down the time and the manner in which these things can be done. And when the Legislature meets, let the laboring man and his employer come up here and present their views. We know that the Massachusetts Legislature will meet all of the different elements and do what is right. I trust the amendment will prevail. I thank the gentleman for giving way.

Mr. William S. Kinney of Boston: It is only necessary to amend the Clapp amendment by taking out the word "said" in the second section to make the amendment sufficiently broad to include clothing and those other necessities of life which the so-called labor element, and other elements in the community, desire to have included in any amendment which we may pass. It has been my intention to move to amend by striking out that word "said", and if that were done and the amendment offered by the gentleman from Worcester were adopted the Clapp amendment, in my judgment, would then be far preferable to the amendment offered by the gentleman from Boston in the third division (Mr. Lomasney).

And in that connection, sir, I should like to have some one, — either the gentleman from Boston himself or some other person who is interested in the proposed amendment, — explain just what his amendment means down to and including the word "function", in the 4th line. As I understand it, sir, a constitutional provision is either a grant of power or a prohibition of the exercise of power. As I understand the amendment as offered by the gentleman in the third division, it is an assertion of a duty on the part of the cities and towns of the Commonwealth to maintain and keep a supply of commodities. Now,

Mr. President, that to me is a far more socialistic proposition than any proposition in the so-called Clapp amendment if it should be corrected by the pending amendments suggested by the gentleman from Worcester and myself.

Mr. ANDERSON of Brookline: I do not ask this Convention to support the Clapp amendment simply because it is a committee report; but I do suggest to this Convention that when a committee toils as we have toiled for two months, and discusses day in and day out not merely their own views but all the amendments which have been suggested in Convention, — taking the books and the authorities and carefully checking up their own judgment in every practicable way, — that the Convention ought not to cast a compromise, composite judgment of that kind to the winds without real reason. We have had suggested here yesterday and this morning by the gentleman from Boston (Mr. Lomasney) a new proposition, extraordinarily brief in statement and drastic and unusual in the extent of the power given, — something that nobody can understand the exact limits of; and so far as I can understand it I am opposed to a large part of it.

Mr. GEORGE of Haverhill: In view of the fact that this committee on Public Affairs has brought in a resolution in the first instance to adopt Socialism by ballot, the very kind that they are trying to adopt by revolution in Russia, and trying to put it across this Convention, and, further, that it now comes in with an amendment and finally has presented a new draft, and has surrendered all right and title to everything it has presented and has accepted an amendment offered by the gentleman from Lexington (Mr. Clapp), does he think that we are bound to follow the lead of a committee with that record?

Mr. ANDERSON: Practically all of the recital of facts, or alleged facts in the gentleman's statement having no relation to real facts, I do not think I shall waste any of the short time I have left in a discussion with him of the balance of his slur on the work of the committee. [Applause.] We have not abandoned the work of the committee. There were differences of opinion between my friend from Lexington and myself that we fought out in part in the committee and in part here. Each of us has conceded something. We have had help from other members, we have had something from every member of the committee; the result is, as I have stated, a composite judgment of the committee after lengthy and elaborate discussion in the Convention. Now, if that is not the way for a deliberative assembly to work, I do not know how a deliberative assembly ought to work. I submit, therefore, as matter of sound procedure, that after my committee has tried to bring its specialized knowledge into play for the entire Convention (which is the proper function of the committee) you want to give some consideration to its report before you cast its work all overboard.

Now, what is the essential difference? I cannot now make any elaborate analysis, but the "maintenance at reasonable rates" is certainly a catch phrase. If anything socialistic ever was proposed in this Convention it is found in those words, — "maintenance at reasonable rates". When I find some of my friends, — whom I know to be as thoroughbred Tories as any to be found in eastern Prussia, — enthusiastic for the amendment of the gentleman from Boston, which starts out with the words "the maintenance at reasonable rates", I fear the Greeks bearing gifts, — gifts from the gentleman from Ward 5.

Look twice before you approve a combination between those who would destroy any grant of legislative power to assist the common people and the gentleman from Ward 5.

"The maintenance at reasonable rates"! What are "reasonable rates" "of a sufficient supply of food and other common necessaries of life, and of shelter, during times of war, emergency or distress"? What is an "emergency"? I am having them all the time. "Is a public function", — what does that mean? — also "and it shall be the duty of the Commonwealth and of the cities and towns therein" "to take", — whether you do or do not pay; whether it is like taking your house in time of a conflagration and you get no compensation, — "and to provide the same for their inhabitants in such manner as the Legislature shall determine."

Well, now, I am not a socialist, although I am not afraid of that or any other epithet. But if there is anybody here who claims to be a conservative and wants sound legislation and not legislation which would precipitate a war in the courts as to the extent of the constitutional power whenever he tries to do anything constructive, he could find no better foundation for such a war than that language.

Now, what have we on the other side? We have the proposition worked out in the manner I have stated. Analyzed by the gentleman from Lancaster (Mr. Parker), an ex-Attorney-General, adopting the language which has been in our Constitution and the subject-matter of consideration by our courts, it has an established meaning so that any sound lawyer may go to the books and ascertain what is meant. We have cut out "the other necessaries of life." I should like them in. I could not get the unanimous support of my committee to put into the Clapp amendment language as broad as I wanted. But it is sound, it is constructive, it is drawn in the light of the existing standards of interpretation in this Commonwealth, it commands the support of those who are not inspired suddenly to statesmanship, who recognize that statesmanship is the result of hard work and the careful study of what other people have done, — is a composite judgment which generally involves the giving way of some part of what you yourself desire; that it involves reasonable deference to the opinions of others, — that is the Clapp amendment. And I ask this Convention to adopt that amendment.

You will observe also that when the Legislature is not in session, "the Governor, with the approval of the Council, may, until otherwise provided by law, exercise the powers hereby granted." There you have an explicit grant of power to the Governor and Council to provide for an unforeseen emergency, so as to avoid the necessity of summoning the Legislature in special session, — a situation which might easily arise if we had some great emergency coming upon us in summer or fall, — putting the Commonwealth to an entirely unnecessary expense. Yet, the Legislature keeps entire control, because at the next session of the Legislature they may "otherwise provide by law." If you put into the Clapp amendment "the other necessaries of life" it would cover my views almost exactly.

As I stated to the gentleman from Amherst (Mr. Churchill), I myself should have preferred to have retained the provision for the civil service. But that did not command support. We kept in, in deference to the views of the gentleman from Norwood (Mr. Willett) and others, the

provision of uniform accounting, although some objected to that. So that I say there has been a concession here, a concession there, an agreement here and an agreement there, until we have a measure which I say is sound. I ask, therefore, this Convention to reject the amendments, including the amendment of the gentleman from Ward 5, and to adopt as the judgment of the Convention the Clapp amendment printed on page 4 of the calendar of to-day.

The Convention, by a vote of 142 to 85, adopted the following amendment, moved by Mr. Martin M. Lomasney of Boston: Strike out the article of amendment and insert in place thereof the following:

The maintenance, at reasonable rates, of a sufficient supply of food and other common necessaries of life, and of shelter, during times of war, emergency or distress, is a public function and it shall be the duty of the Commonwealth and of the cities and towns therein to take and to provide the same for their inhabitants in such manner as the Legislature shall determine.

The above new draft, accordingly, was substituted for the resolution reported by the committee and was ordered to a third reading Wednesday, October 3.

A motion to reconsider called forth considerable discussion of the merits of the measure on the following day.

Mr. AVERY of Holyoke: I voted yesterday for what we might term the Lomasney amendment. I voted for it because it seemed to me to be the best emergency measure, because I thought it would be adopted or accepted by the people, — I wanted to see something accepted by the people on this matter, — and because it avoided to a certain extent the troublesome question of municipal trading. Although I voted for it, I recognized that it did not meet some of the suggestions I should like to see in a measure of this kind. It was not sufficiently clear that it enabled the State in the seven fat years to provide against the seven lean years, and it did not sufficiently touch upon the aid which the State must give in the near future to the question of distribution as a permanent measure.

After the measure was adopted I talked with some of the gentlemen interested in the matter, and they gave me the intimation that possibly there might be some modification of the proposed Clapp amendment which would give to us, or the great part of us, all the things that we wanted. Again, I had the feeling that perhaps those of us who voted for the Lomasney amendment did not treat with as much consideration as we should the careful and patient work of the committee on Public Affairs and the work of the able chairman of that committee. Again, as I thought the matter over, it seemed to me that possibly we did not all of us realize deeply enough the situation which confronts Massachusetts. We are a manufacturing State, in one corner of this big country. We cannot compete in many things with the States of the middle west and with New York, New Jersey and Pennsylvania. If we do compete we must be able to provide reasonable shelter, food and clothing at reasonable prices to the people who man our mills and our industries. We are about to submit a resolution on absentee voting, to which we all practically agree. We passed an anti-aid amendment, on the form of which practically the Convention all agreed. It seemed to me that it was worth while on as important a matter as this to reconsider the action we had taken, to see if we could not make one more effort to get a measure to which the greater part of this Convention would agree. With those thoughts in

mind I made the motion to reconsider, and with that spirit I present the matter to this Convention.

Mr. CREAMER of Lynn: In the reconsideration of the so-called Lomasney amendment adopted by this Convention yesterday, I want the members of the Convention to fully realize that this amendment provides no direct means of preventing extortion by private monopolies in normal times; it provides for relief only in times of war, emergency or distress, — all abnormal conditions.

I want to say to the members of the Convention who wish to secure relief from the extortion of private monopolies in normal times, that they should vote for the reconsideration of this amendment. The meaning of the word "exigency" in the Clapp amendment has been determined by our Supreme Judicial Court. The meaning of the words "war, emergency and distress", as used in this resolution, has yet to be determined. In my opinion, and in the opinion of many others, the Lomasney amendment will provide no relief even in abnormal times until after the courts have had time to pass upon what those words mean.

Mr. LOMASNEY of Boston: This Convention yesterday, after a good deal of deliberation, took a certain stand. There was of course no real meeting of all the minds, but what did we do? We substituted a new draft. Now, that new draft takes its place in the calendar and every man has a chance to read it, go over it, prepare his amendment, suggest it, and talk it out. But why reconsider it now? Why interfere with our regular order of procedure? A great many of us were busy yesterday with the regular Convention work, we did not have time to confer. Some men came to me yesterday and wanted to talk about amendments. I said: "I will see you later." We were here until half-past four yesterday discussing another measure. I have not had a chance to confer with them this morning. I submit, Mr. President, we should not reconsider the matter. Let it go into the calendar. Then let everybody get together, talk, confer, make amendments, and arrive at some conclusion.

Mr. CREAMER: I should like to ask the delegate from Ward 5 if, when it comes to the next stage, he will consent to the insertion of the words "public exigency" in place of the word "emergency."

Mr. LOMASNEY: The gentleman from Boston never makes any promises. [Laughter.] When he makes promises he keeps them; he does not say "Yes" and then afterwards change.

Mr. CREAMER: The fact that the gentleman from Ward 5 always keeps his promise, — I think he does, — is why I want him to make it.

Mr. LOMASNEY: The gentleman, with all his shrewdness, cannot get me to make a promise now, because I want to see and hear what every fair-minded man in this Convention has to say. The Convention is full of that class of men. Let every man do with this amendment what he did with the other amendment, — put his best thought into it. Let all amendments go on the calendar, let us look them over; then at the next reading we can have a chance to see what is the best thing to do. If we want to expedite matters we should not reconsider. Let this draft take its place in the calendar; prepare your amendments; then let us see if we can get together. I am willing to get together on any measure that will help Massachusetts, its industries and its people, and I hope the motion to reconsider will not prevail.

Mr. Begley of Holyoke: I rise to indorse the motion made by my colleague from Holyoke, and my reasons for indorsing the motion are based upon a comparison which I have made of an opinion of the Justices of the Supreme Judicial Court in the 182nd Massachusetts Reports with the amendment proposed by the gentleman from Boston. My comparison has constrained me to the conclusion that the so-called Lomasney amendment is nothing more than a codification of the virtual law of Massachusetts to-day. At the time of the coal strike the Legislature petitioned the Supreme Judicial Court for a ruling concerning the powers of municipalities to deal in fuel. There were four questions in that petition, the first three dealing with the question I have stated. The fourth question was: "If the answer to any of the foregoing questions be in the negative, does the power so declared as non-existent exist in the case of an extraordinary emergency, and may the different cities and towns be constituted judges of said emergency?"

In regard to the powers of cities and towns to deal in fuel, the court is of the opinion they did not have the power. With regard to the fourth question, they said it presents greater difficulties:

> The only condition referred to in the question is "extraordinary emergency," and the conditions referred to in the accompanying bill are "a scarcity of fuel and a pressing need thereof," and "a reasonable ground of belief that such a condition will occur in the near future."

The court said:

> As to that, we are of opinion that if the supposed conditions exist in any city or town, it may be authorized, under proper legislation, to sell fuel with the limitations above stated.

That decision of course was made with reference to fuel, but it does not change the principle. The other day when the original Anderson resolution was passed to its first reading I sat back in my seat satisfied in the thought that if this Convention did not pass another amendment they had done something to justify their existence; and yesterday I was very much surprised at the attitude, — if I may call it, the will-of-the-wisp attitude, — of the chairman of the committee, in coming in and stating that he felt that concessions ought to be made. If I remember correctly, he said he had made some concessions. If my memory serves me correctly, I think he conceded everything, because he includes the words "Whenever public exigencies require." That is just what the opponents of this proposition have been fighting for; they want to include the words "public exigencies"; and, Mr. President, that is nothing more than a codification of the virtual law of the Commonwealth of Massachusetts to-day.

Mr. Anderson of Brookline: I am fearful that this Convention has been talked to so much it is losing the power to vote. I can hardly believe that there is not some serious defect in the statements of those of us who have discussed this proposition, when men for whose judgment and absolute sincerity I have so great respect as I have for the great majority, — indeed for almost the entire body, of this Convention, — should vote as they did yesterday. We have passed nothing, you know, to final vote. Perhaps we have got so in the habit of talking that by a species of revulsion of mental processes we have made ourselves unable to vote.

Now, the gentleman from Holyoke who spoke a few moments ago voiced a criticism of the course of the chairman which I have heard outside. There must be some foundation for it, — in my failure to make myself clear, — otherwise the criticism would not be made. But I want to say now, with such emphasis as I am able to state, that there has been in no essential or important particular any change in the attitude of myself or of my colleagues on the committee from the beginning to the end of this entire debate. There was debate as to whether we should include other necessaries than food, food-stuffs, fuel, coal and ice. "Other necessaries" would have included clothing and boots and shoes. It seemed to those of us charged with the primary responsibility that, in order to meet the more conservative view of some of the members of the Convention, and, as we thought, perhaps command unanimous support, if we could get the essence we might make that concession. The gentleman from Holyoke suggests that the words "Whenever public exigencies require" cut down our amendment. If he had listened carefully to the learned gentleman from Fall River (Mr. Cummings) and the ex-Attorney-General, the gentleman from Lancaster (Mr. Parker), he would have concluded that those words are admonitory only, that they leave the power in full force.

Now, gentlemen, let me call your attention to the gist of this proposition. If you look at page 4 of yesterday's calendar you will find in section 2 of what is called the "Anderson amendment" an enumeration of the powers of increased distribution facilities as I wanted it stated, — providing for the establishment of "markets, docks, fuel and coal yards," etc., "slaughter-houses, cold storage plants, and other like means for collecting and converting, preserving, storing, selling and distributing the necessaries of life." That is the gist of the whole thing, except the emergency power, which is given, if at all, in very ambiguous and inadequate shape in the amendment of the gentleman from Boston (Mr. Lomasney).

In the Clapp amendment exactly the same powers are given as are given in my draft. It is a mere change in the form of expression, in that he says: "may authorize the Commonwealth and cities and towns to establish, maintain and operate *all necessary means* for collecting, converting, preserving, storing and distributing said necessaries of life." The two forms mean precisely the same thing. If you want to do anything at all constructive beyond removing the constitutional doubt as to whether the Commonwealth might do what it did do in the case of the Chelsea and the Salem fires (when they probably exceeded their constitutional powers, as determined in the case of Lowell *v.* Boston) note that that is the most that the amendment of the gentleman from Boston does. If you want to go beyond that, then you may adopt the Clapp amendment, as furnishing in proper shape, carefully worked out, adequate constitutional power for the Legislature to deal with the distribution problem.

One other thing. The gentleman from Boston, who yesterday announced that he had worked out a perfect thing, and in four or five lines had formulated something that had taken the place of all the good-for-nothing work of this committee extended over a period of three months, now says that it should stand over; that everybody should bring in a series of amendments; that by and by, starting *de*

novo from his basis, we may build up something worth while. It is an encouraging process for our committee and for this Convention, to start *de novo* with the resolution of the gentleman from Boston.

Mr. WILLETT of Norwood: I believe this is one of the most important matters before this Convention affecting the industrial prosperity of Massachusetts. At the cry of socialism raised yesterday we were driven to accept a temporary expedient of which some day I believe that we shall be ashamed. We are not in ordinary times, and those of us who are identified with the industrial life of the Commonwealth have cause to look into the future with great anxiety. The nations of the world have gone into flux, and we do not know on what economic basis we are coming out. This measure gives us a chance to help the industrial conditions of our State. They are not socialistic propositions, but are good straightforward business propositions. I do not believe we are giving this matter the consideration it deserves. I should like to see this motion prevail, and have the matter referred back to the committee. The matter can be dealt with then in an orderly and decent way, and not by some member writing down three or four lines on a piece of paper and saying: "Take this as sent from heaven." I hope this motion will prevail, so that we shall have every possible chance to consider this most important matter.

The Convention refused, by a vote of 82 to 145, to reconsider its action in ordering the Lomasney amendment to a third reading.

The committee on Form and Phraseology reported a new draft (No. 363), which was assigned for debate at 2 o'clock Wednesday, October 10.

Messrs. Ezra W. Clark of Brockton and Albert E. Pillsbury of Wellesley offered amendments cited at the beginning of the chapter.

Mr. PILLSBURY of Wellesley: I am usually so unfortunate as not to be able to follow the leader of the Convention who sits for ward 5 in the third division (Mr. Lomasney). I voted the other day to substitute his proposal, not because I should be willing to see it adopted in the form in which it was offered, but because I regarded it as the least objectionable of all the propositions which at that time were before the Convention, and as furnishing the best basis for further amendment, which I think it needs. I will not repeat the reasons which I gave the Convention the other day for my attitude toward this measure. I am satisfied, and all experience confirms the view, that there is absolutely nothing for the public in this scheme or any similar scheme, except that it is possible that in some emergency, which it would take a very active imagination to compass, the intervention of the State's power of eminent domain might enable us to get food or fuel or some necessary article at some price, though it would be at an enhanced price, which otherwise we could not get at all. That, in my view of the matter, is the only justification for this or any similar scheme. It should in my opinion be confined within narrower bounds, and I wish now to make clear, as I think I can in a moment, the precise effect and the only effect of the substitute which I have offered.

First I have taken out the general and sweeping "necessaries of life" and confined the operation of it to food for man and animals, fuel and ice. The other change, and there are but two, is a change which ought to be made, in any view of the matter, as I think the Convention will agree, by taking out the words: "It shall be the duty of the Common-

wealth and of the cities and towns therein" to go into this business. In its present form it is made the *duty* of the Commonwealth and the cities and towns, to go into trading in the necessaries of life during time of war, public exigency, emergency or distress, whatever the situation or the other conditions. The question when it is the duty of the Commonwealth to interfere, assuming that it has the power, is clearly a legislative question, and it ought to be left to the Legislature to determine. The resolution in its present form is practically a standing mandate to the Legislature to go into trade at any time when either of these conditions arises, — war, public exigency, emergency or distress. Now it is plain, and it must be evident to every member of the Convention, that the existence of one or more of these conditions might not furnish any occasion or any justification whatever for putting the State into trade. The existence of war, merely, clearly would not, and it must be remembered that we are not legislating for this war, but for any and all wars. In other words, it is by no means to be assumed that the mere existence of a state of war would offer any inducement whatever for the Commonwealth to go into trade in the necessaries of life. They might be abundantly supplied, and at reasonable prices, notwithstanding a state of war. The question when the duty arises, therefore, is, as I say, a legislative question, and it ought to be left to the Legislature to determine. And I call particular attention to the fact that my amended form does not impair the power in the slightest degree. The power exists as completely under my form as under that of the pending resolution, the question when the necessity arises for the exercise of the power being left to the Legislature, as it ought to be.

Mr. LOMASNEY of Boston: The other day it was my privilege to suggest an amendment. Since that time the committee on Form and Phraseology have been over the amendment and have suggested this form. I have talked with the men representing the labor movement, and they feel that the word "exigency" should be inserted in this amendment. The attention of the Convention was called to this word by the gentleman from Fall River (Mr. Cummings), who is not here to-day, but you will find that the word "exigency" is in the present Constitution.

The other day we were on the verge of plunging the State into all kinds of schemes, putting into our Constitution authority to take slaughter-houses, warehouses, canneries, cold storage plants, docks and many similar matters, and everything of that kind you did put a cloud on taxable property, because real estate is visible taxable property. Any man who knows anything about business knows what burdens real estate has to bear to-day.

When the labor men talked with me they said: "If you will put into the amendment the word 'exigency' and the words 'and distribution', we shall be absolutely satisfied with it. They had some other amendments, but I said to them frankly: "No. We have got to go slow here. You must all yield something to have a meeting of minds, so that we can get to a point where we shall do what is the right thing for the laboring people, do what is the right thing for the capitalist, and do what is the right thing for the poor people of the State at the same time." On the other propositions they offered, I suggested to them to go slow, not to ask too much. But, Mr. President, with the word "exigency" in here now, as defined by the Supreme

Judicial Court and by the dictionary, they would be satisfied. I would not take out "emergency" for the word "exigency", so we compromised, and we allowed two words to go in, "public exigency". The honorable gentleman from Lancaster (Mr. Parker) suggested the word "public" at the last meeting, and we have accepted it. It now reads: "public exigency, emergency," etc. Now they are satisfied to support the measure. That is quite a different proposition from the one you had here the other day, — the one that United States Attorney Anderson was trying to push through the Convention. And mark you, Mr. President, nothing can be done under this amendment until the General Court goes into the matter, gives all sides a hearing, and enacts into law what the Constitution allows.

Now what does the gentleman from Wellesley (Mr. Pillsbury) want to do? He frankly tells you he wants to strike out the words "necessaries of life". That is one of the most essential parts of the measure. Suppose, Mr. President, we have a strike in a mill town in the middle of winter, and the children of the operatives are freezing, — freezing for want of coal and of clothing. Under the Pillsbury amendment the cities and towns could not sell coal or clothing to them. He admits that. What is more essential than that? "Other necessaries of life". What are the necessaries of life? Everybody knows. They are liberal words, but the law must be administered by men of common sense, and we do not do anything until we get the Legislature to define and determine these matters. He tells you frankly the present proposition is too narrow, that we ought to make it as broad as we can. He does not stop and say he will take the word "exigency". He goes farther and he specifically puts in food, — not clothing. Food and clothing are synonymous. You cannot get away from it. No matter how well filled a man's stomach is, if he has not clothes of what use is he? He must have clothes. That is one of the necessaries of life. And you see he says: "for man and animals, fuel and ice." Now Mr. President, it is a great thing to have free ice or cheap ice or plenty of ice in the summer, but it is not half as essential to have it as it is to have warm clothing on cold winter days and nights, it is not half as essential to have ice to put to your head in summer as it is to have fuel and clothing to keep you warm in winter. That is common sense. The gentleman never has been in want. He does not know how the poor people feel on this matter. You never need be afraid the Legislature will go too far in extending justice. You can trust them on this matter to be fair and to do right. I submit, Mr. President, that when you have the laboring people willing to meet the people here who represent capital from all parts of the State, it is a good time to start getting together and see if we do not want to understand one another better, so that we can be closer and pull together rather than divide on these essential things.

Now, he also puts in these words, Mr. President. I find no fault, and I make no unfair criticism of the gentleman; he states it frankly; but I am not willing to vote for them. His amendment reads "under terms and conditions." That is one of the dangers of every contract. Why, we had those words in the old street railway law of the State, when they used to have street railways. It provided that the Metropolitan or the Middlesex roads should get their location upon "such terms and conditions" as the board of aldermen should specify. Under

that phrase, "terms and conditions," they could make the roads pay for the roadbed, they could make them do all kinds of things. But when they came to get practical legislation they struck out "terms and conditions" and said "regulations and restrictions". I am afraid of putting "terms and conditions" into the Constitution on this matter, especially when the gentleman favors them.

Read the article of amendment as presented the first day, with the additions, the "maintenance and distribution" that have been added at the suggestion of the labor people. I fought the word "production." They said they wanted it in; but it is left out. "The maintenance and distribution at reasonable rates, during time of war, public exigency, emergency or distress, of a sufficient supply of food and other common necessaries of life." That goes far enough. The amendment of the gentleman from Wellesley (Mr. Pillsbury) says "food for man and animals, fuel and ice." My amendment reads "necessaries of life", and the providing of shelter, — are public functions. "And it shall be the duty of the Commonwealth and the cities and towns therein to take and supply the same in such manner as the General Court shall determine." To what better cause could we commit the Commonwealth than to do these things for the decent deserving people of the State? You are not giving it to them for nothing. You are not dealing with people who seek charity. And this is to do what? To give to the men who do not desire charity, — and thousands of people do not like to seek it; thousands of people starve almost before they ask charity. Nobody knows what a poor decent person will do before he looks for charity.

Mr. Lowe of Fitchburg: I should like to ask the gentleman if he thinks the resolution as drawn would permit the State to produce. It seems to me that that is the most important part of that resolution. We may fall again, Mr. President, into the halcyon days of the New Freedom of Mr. Wilson as we did in 1912 and 1913. It seems to me that if we are going into this proposition at all we ought to permit the State to take some of the uncultivated lands, either by lease or purchase, and produce. The State ought to take some of the men out of the bread lines when they exist, and let them go into the fields and produce. It seems to me that the word "produce" should be in this resolution.

Mr. Lomasney: The resolution is the property of the Convention. Any member who has views should state them. I simply was explaining the amendment and what occurred in my connection with it.

I think the very thing the gentleman is after can be brought about under this measure. "Other common necessaries of life" is a broad proposition. It leaves it to the Legislature. And anything to get those things, as it says here, is broad, and to my mind, although I am no lawyer, I think it is strong enough. The best evidence that it is pretty broad and workable is the effort the gentleman from Wellesley (Mr. Pillsbury) is making to restrict it. He says so frankly. He says it is too broad. I say: "Don't restrict it." There can be no question what this means. It allows large power to the Legislature. But what does that mean, Mr. President? You know, and every member in this body knows, — and there are a great many men here who have sat in the Legislature, — that if this amendment is adopted by the people there will be a petition presented, that a pile of evidence will be

presented before the committee. They will protect every one in the community. And in my opinion, Mr. President, it has just been called to my attention by the gentleman from South Boston (Mr. Flaherty) that-Convention document No. 116 contains the very thing the gentleman from Fitchburg is after. Document No. 116; that allows them to do what he wants. Why not let that matter stand by itself? Go into that proposition when it comes up, and talk about it then, and pass it or not just as you please. Why not let this matter, which is an emergency matter, which is necessary in times designated here, stand on its own merits? I have had pointed out to me that there is another one, No. 321, on the subject of production. Now when there are filed so many measures on the matter of production, let us confine this one to just what we have specified.

Mr. CREAMER of Lynn: I should like to ask the delegate from ward 5 (Mr. Lomasney) if there is not a very grave possibility that those other questions will not be reached by this Convention.

Mr. LOMASNEY: Those questions are before the same committee that brought out the other proposition. They are before the same committee. Of course I cannot tell what is possible. It is a pretty hard thing to say anything is not possible. Nearly everything is possible. But "probable" is another thing. I am not going to talk on possibilities.

The gentleman on my left (Mr. Creamer) the other day asked me about this word "exigency," and I told him frankly I did not desire to make any promises. I had talked to some of the labor men in this Convention, and how could I stand up before the Convention after talking with those men, trying to get their viewpoint, so as to put it into law, how could I, without talking with them first, stand up and say that I would take out the word "exigency," if I wanted to be honorable toward them? I could not do it. But the laboring men themselves suggested the word to me. The three words they suggested are in there. They did not get all they thought they ought to have, but they are reasonable, they are practical men, they recognize the conditions, they want to coöperate with capital in everything that is proper. Why not get together some time on these things and recognize that the Legislature represents all the people, and if we give them the right to go forward in this matter we can trust them to draw an amendment surrounded with all the safeguards necessary to have an economical and at the same time a fair, liberal distribution of these things when it is necessary to have it done.

I am opposed absolutely to the proposition of putting our citizens in competition, at all times, with State aid or with city aid, or with our other industries. How could you allow a man to go over to the Commonwealth docks and take a piece of the State's land for a nominal sum of money and do the same business as men on Atlantic Avenue who were paying three or four times the rent? You cannot do it. Who could compete successfully under those conditions?

These are times that are hard in many ways. The gentleman from Worcester (Mr. Washburn) showed you clearly a short time ago how the purchasing power of a dollar has decreased. It is the purchasing power of the dollar that counts, — the law of supply and demand. There may be harder times coming, because while wages are up materials, articles, necessaries, have jumped enormously, too, so that a

man cannot save to-day nearly as much as he could with less wages a few years ago.

I trust, Mr. President, that the Convention will take the report of the committee on Form and Phraseology, because I believe they have made it in good faith and they have put it in better form and have incorporated the essential things we need under the present conditions in this Commonwealth to do what is right.

Mr. Washburn of Middleborough: It would appear from the explanation of the gentleman from Boston in the third division that the report of the committee on Form and Phraseology changes the sense and legal effect of the resolution from what it was as referred to them. That being so, — and I am inclined to think this is the correct view, — I submit that the report is in violation of rule 29, which provides that when any change in the sense or legal effect of an amendment has been made by that committee it shall be reported in the form of an amendment.

Mr. French of Randolph: I was about to make the same point as that suggested by the gentleman from Middleborough. It seemed to me that the committee on Form and Phraseology, if this was an attempt to report back to the Convention a measure which went to them, had exceeded their authority, inasmuch as the change here is clearly one of substance, and of vital substance, particularly in the insertion of the words "public exigency." When the amendment went to the committee it was an emergency measure pure and simple, and I voted for it upon that ground. It has come back to us a socialistic measure pure and simple, because of the fact that it contains the words "public exigency". Now, a "public exigency", as has been suggested over and over again on the floor of this Convention, has been construed to mean, in effect, "public convenience" in the opinion of the Legislature. In other words, there has been taken out of this amendment absolutely everything in it in the nature of an emergency measure, and it has become, under the broad construction repeatedly given to those words by the court, purely a socialistic measure.

Mr. John F. Cusick of Boston offered the amendment cited at the beginning of the chapter.

Mr. Cusick: I do not want to take up the time of this Convention by apologizing for my activity in respect to this matter. I simply want to say to you this: That although in a sense I, as counsel, have been conversant with certain merchandising results of certain large distributors in this city and greater Boston, and although I am counsel for some of them, nevertheless I trust you will believe me that when I say I am sincerely interested in this matter simply for the good of the Commonwealth it will be sufficient and I shall not have to repeat it again. Now, I have considered this matter in connection with some other gentlemen very carefully. This amendment is nothing more nor less than putting in different and more concise language the principles involved in the amendment made by the gentleman from Boston and passed by this Convention at its last sitting. The measure is intended to be entirely an emergency measure. This amendment provides only for contingencies which may arise during the time of war, public emergency or public distress. If you delegates will remember, the member from Boston amended his original resolution by adding the

word "public", before "emergency", and I assume "distress", so that so far it is exactly the same as the measure moved by the honorable gentleman from Boston. It gives to the Commonwealth and the cities and towns the power first to take by the power of eminent domain. In his resolution it gives the power to take. I simply have extended that and used the words "power of eminent domain", because that is well understood by decisions of our court. Then it gives the right to purchase. That is the same as in the original. It does add the word "distribute". I think it would be implied in the original resolution, but nevertheless the word "distribute" is in this amendment, so that it gives to the Commonwealth, cities and towns, only during time of war, public emergency or public distress, the right first to take by eminent domain, if necessary; secondly, the right to purchase and to sell, and that implies the right to distribute, — what? Food and the necessaries of life. I sincerely agree with the gentleman from Boston (Mr. Lomasney) that if this resolution is to mean anything it ought to include the necessaries of life. I do not think there is a single thoughtful man in this Convention who will deny the proposition that the Commonwealth, the city or town, should, under conditions determined by the Legislature, have the right at such times to go and take food or necessaries of life wherever they may be, and distribute them for the public good. I do not believe there is a representative of a corporation or anybody else within the hearing of my voice who would deny that primary principle of government.

Mr. Creamer of Lynn: I should like to ask the delegate from Boston if chapter 342, section 6, of the legislative Acts of 1917, does not give precisely the same powers that he thinks we ought to have in this constitutional amendment. It gives those powers during times of war. The Governor has that power under that chapter, and, as I understand it, can now exercise that power, as I suppose he can in times of emergency and distress. Times of war are always times of emergency and distress. Therefore the point I wish to make is that the delegate from Boston simply is advocating that we give a constitutional power that is now being exercised.

Mr. Cusick: Times of emergency and distress may include times which are not times of war. I believe this does give to the Commonwealth and the city or town a power which it does not now possess under the Constitution. It makes no difference, however. If it has the power now I am glad of it, and we exercise it. The purpose, however, is to limit the power given to a Legislature or to the Commonwealth or to the city or town to go into trading propositions. That is objectionable, and I believe it is objectionable to a large majority of the delegates to this Convention. And, Mr. President, I want to direct the attention of members of this Convention to this fact: Have we been treated quite frankly in the presentation of this matter by the chairman of the committee on Public Affairs? If you remember, when this matter was first discussed the record will demonstrate that it was the intention of the committee on Public Affairs to give to the Legislature unlimited power to go into these market propositions in normal or abnormal times. He was asked: "Was that the sense of your committee?" and he answered: "It was." I have learned since that it was not the sense of that committee. I do not believe that when thoroughly explained there would be a baker's dozen of the dele-

gates to this Convention who would support a proposition that should give the power to the Legislature to put any such proposition up to the people of this Commonwealth. I believe that the first reading of the original amendment was given under a misapprehension of the meaning of that measure, and I believe the facts will corroborate me.

This amendment is the same thought as was embraced in the resolution passed by this body, stripped of some of its unnecessary verbiage. It is now made so plain that no delegates can feel otherwise than that when voting for this amendment they are voting for something which they all understand, both as to its scope and as to its purpose. This amendment means only one thing. It is not socialistic. The socialists will not support it. It is purely and simply an emergency measure. But it does do one thing, and that is this: An emergency condition may be more than a war condition. When I first spoke about this matter I told you that I felt the Commonwealth should have the power, even if a combination was legal that controlled the price of a food-stuff to the detriment of the public welfare, — I believed the Commonwealth should have some power to check it, and I believe that principle is going so far that every man will feel that this proposition is honest to the people and not for the purpose of furthering socialistic views or political views or any other views. It is an honest measure in the interest of the people, unselfish, and not a subject of any log-rolling or selfish consideration.

Mr. Edward Carr of Hopkinton offered the amendment cited at the beginning of the chapter.

Mr. Carr: It was with some astonishment that I heard and observed the complete, — the apparently complete, — change of mind of this Convention, after two readings, of this document, — the resolution recommended by the committee on Public Affairs in this present proposition that is before the Convention. I admit that it was a surprise to me, and it must have been a great surprise to a great part of the 140 members of this Convention who voted to sustain the committee's report up to the second reading. When the gentleman from this division from ward 5 (Mr. Lomasney) offered his amendment, I not only was surprised but I was very much astonished, because I thought I knew the gentleman from this division better. I supposed at the time of the prior readings he understood the Public Affairs Committee's report and that he was in harmony with their position, and that there were not the limits to the proposition that he has advanced this time. Now, Mr. President, I want to read what this proposition is with my amendment striking out this line, because I am sure every member of this Convention believes that this Commonwealth is under some obligation to look after its inhabitants, even outside of times of war and public exigency, and that is what my amendment means with the objectionable part stricken out. It says:

The maintenance and distribution at reasonable rates of a sufficient supply of food and other common necessaries of life, and the providing of shelter, are public functions, and it shall be the duty of the Commonwealth and the cities and towns therein to take and provide the same for their inhabitants in such manner as the General Court shall determine.

Is there any member of this Convention who will say that that is not the duty of the Commonwealth? That duty is not confined to the

question of whether there is a public exigency or a state of war or a great emergency. Is it not the duty of this Commonwealth to provide for its inhabitants when any group or combination of men get together and attempt, as we have seen done time after time, to impose on the people an exorbitant price for the necessaries of life? And that is all we are asked to say. I am very much surprised at my friends who have changed and taken the other position. I cannot understand it, because every one of the 142 delegates in this Convention who voted for the committee's report must have known the difference between that report and this proposition now. What has taken place in our minds? Does not the same condition exist now that existed when we voted twice on that proposition? Does it not look just as necessary now that we should vote the same way again on that same proposition as we did twice?

Mr. Dennis D. Driscoll of Boston: Is the delegate aware that the committee itself changed its report, on a second report by the same committee, by a vote of ten of the members of the committee? Why did they change the first report they submitted to this Convention?

Mr. Carr: I cannot understand why the committee made any change, but the change of the committee was not so radical. The chairman of the committee came into this Convention and tried to have document No. 358 sent to a third reading, and it was then that the document of the gentleman from Boston in this division was offered, cutting out the broad powers of cities and towns and turning back completely on the original proposition that the Commonwealth, at all times, should have the power to go into the job of taking care of its inhabitants and providing them with the necessaries of life. I cannot understand, Mr. President, and I should like to have it made clear to me, and I know a number of the delegates in this Convention who would like to have it made clear to them, why it became necessary that this change should be made. Was not everybody in this Convention aware of the difference between the propositions of the men who were opposed to the committee's report and the committee's report itself? We knew then the argument against the committee's report, that it was broader than the proposed amendment, which took care only of emergencies and times of distress. We knew it at that time and voted for it, and it did not matter whether we be called socialists, or anarchists, or what not. The 140 men who voted at that time knew what they were voting for. Is it any more socialistic now than it was at those two times that we voted for it? I cannot see anything that is so terribly socialistic in this proposition that I offer now, namely, that it is the duty of the Commonwealth to provide a sufficient supply of food and other common necessaries of life for its inhabitants. Is this Convention going to put itself on record that that is not the duty of this Commonwealth, and that that duty is limited to times of distress and public exigencies and times of war?

In the State Legislature this year, as the gentleman from Lynn (Mr. Creamer) has said, we passed a law, evidently intended at that time to be in conformity with the present Constitution, that provides for exactly the thing that this amendment to the committee's report is attempting to provide for now. In other words, the Legislature of this year thought that there was in the present Constitution sufficient

authority to pass this law without any amendment of the Constitution. Now it seems to me we are not making any advance at all. If the 140 men who voted for that proposition realized what they were voting for then, and I think they did, they are entitled to a better explanation than simply to be told that there has been a change of mind in some of the members of the committee, — ten members of the committee, — and their change of mind has not been so complete as the change of mind that has taken place in the gentleman in this division (Mr. Lomasney). I am willing to go the distance and vote for document No. 358. I believe every one of the 140 members who voted for the first proposition is willing to vote for document No. 358. There is a radical difference between document No. 358 and document No. 363. There are not the limitations in No. 358 that there are in No. 363. I have introduced this amendment so that the proposition will be put fairly before this Convention. The people of the Commonwealth will have a right to know whether or not the delegates to this Convention were serious enough in the consideration of their interests to declare that it is the duty of the Commonwealth to take care of its people in all times in regard to supplying them with food-stuffs and the necessaries of life. I hope, Mr. President, that there will be a roll-call on this proposition, and I hope that the 140 men who voted will stick where they voted in the first instance, unless they show some better ground than I have heard for changing their opinion.

Mr. Charles F. Dutch of Winchester offered the amendment cited at the beginning of the chapter.

Mr. Dutch: With reference to the remarks of the previous speaker, I do not know whether he has been in attendance or not, but it so happened that on motions to amend which were offered by me the issue was presented to this Convention which he now says he desires to present, and there was a test vote, which most decidedly and overwhelmingly substituted a strictly emergency proposition. Now, the difficulty that we have in this Convention is this: Somehow, through the committee on Form and Phraseology, we have a draft here which leaves some of us in doubt as to whether we now have the emergency proposition which was sent to that committee, and that doubt exists because the word "exigency" has been injected into this resolution. I take it that the change by adding the word "distribution" is not a change of substance, because those of us who favored this emergency proposition contemplated distribution as part of the work. That is not a change. The difficulty has arisen, and it has grown steadily since this word "exigency" was first brought into this matter, as to what it means.

Mr. Lomasney: If the gentleman will pardon me, so that there will be no question, I desire to say frankly that I told the labor men that I did not believe the word "exigency" was needed in there. I told them I thought it would raise trouble in the Convention. I pointed out the word "emergency." But they wanted "exigency" in, and I said I would vote for it, and do what I could for it. Frankly, Mr. President, I do not want any of you to believe that I was trying to put anything over anybody in an underhanded way, because I told the gentlemen representing labor the dangers of the word, just as the gentleman is now telling the Convention.

Mr. Dutch: I am very much obliged to the last speaker for that explanation. It is entirely frank and makes it entirely clear. But I do think we ought to call the attention of the delegates once more to the difficulty with this word which has been brought in here. It was first used as equivalent to "emergency". The first doubt came when the distinguished delegate in the second division from Fall River (Mr. Cummings) called our attention to the use of the word in Article X of the Constitution, which has been read previously: "Whenever the public exigencies require, that the property of any individual should be appropriated to public uses". It was clear from the time that was pointed out, and up to the time that the delegate from Milton (Mr. Bryant) cited a decision of the court actually construing those words "public exigency", that those words mean nothing more than public convenience. Public convenience! That is what they have been construed to mean. Now, we have got to face that fact. I had no idea of it. I have to confess it. I used them when I first made my motion, following the gentleman from Wellesley (Mr. Pillsbury). When they pointed out the tenth article I said immediately that there was doubt, and I threw what weight I had for the resolution of the gentleman from ward 5, because he did not have those words in, and the report of the committee under the name of the gentleman from Lexington (Mr. Clapp) did have those words in. The resolution of the gentleman from Boston in the third division (Mr. Lomasney) was adopted overwhelmingly, because it was an emergency proposition.

Now, we have had that test vote, and I believe we want to keep it an emergency proposition. Therefore I have offered this amendment, which changes just that one word. I make no other change whatsoever in this report as agreed upon by the committee on Form and Phraseology and as agreed upon, as it is stated, by the labor men, except to strike out this one word "exigency", because, so far as we have any idea what it does mean, it does not mean what we want it to mean. It means simply public convenience, and it does not mean emergency. If you put it in and also have the word "emergency" there, you absolutely compel your court to find a different meaning for it, because the court assumes that you put it in there for a purpose. Having the word "emergency" in there, the court must find that you mean something else by the word "exigency". Therefore I think we ought to put this back where it was, to what the gentleman from Boston (Mr. Lomasney) said he intended originally, and leave it as otherwise reported by the committee on Form and Phraseology.

Mr. Robert Luce of Waltham offered the amendment cited at the beginning of the chapter.

Mr. Luce: When this amendment was printed in the calendar at a previous stage, a gentleman informed me it was the most radical amendment that had yet been offered in this Convention. I was honored with epithets indicating my extreme radicalism, which do not disturb me greatly, and I admit, sir, that this is the most radical form in which this measure can be put. I also charge that in the present form this amendment is not worth our votes. It greatly embarrasses me to be asked to vote for an amendment that, as far as earnest and long study can show me, is not worth the paper upon which it is written, for in my judgment the first half of it does not

change existing law and the second half of it is wholly superfluous. When I am asked to send out to the people of this Commonwealth a thing that savors so much of political persiflage, savors so much of an attempt to deceive the people, when they ask for bread and we give them a stone, certainly my position is most embarrassing.

Sir, fourteen years ago I was a member of the Legislature at the time of a great period of emergency and distress, and as a member of that Legislature I joined in asking the Supreme Judicial Court what were its powers. We were told by the court distinctly what were our powers, and the court on that occasion undertook to decide what is an emergency. And there is the meat in this cocoanut. There is the weakness of this draft. There is the futility of it. If you pass this amendment you still leave it for the Supreme Judicial Court to say what is the emergency. There is no question about time of war. We are proceeding already under legislation enacted this last spring, passed in spite of the lack of any such amendment as this. The whole problem is: Who shall at other times say what is an emergency?

About fifty years ago, — to be accurate, in 1860, — the court took the position that while it was its function to declare what is a public use, it was the province of the Legislature to say what is an exigency, — notice the use of the word "exigency", — and so the court for several decades permitted the Legislature to exercise its normal and proper functions. But in 1903 the court usurped, — and I use the word without the slightest disrespect to the court, for I honor its members and I value very highly its opinions, — the court usurped the legislative power. The court said "We will decide when an emergency exists." You may look in its opinion given to the Legislature to which I have referred, and you may find how some of the Justices said an emergency was this sort of a thing, another Justice said an emergency was that sort of a thing, and the court legislated.

Now you are asking me here to share with you in saying what is an emergency. That is a legislative function. It is not the business of a Constitutional Convention. It is not the business of a Supreme Judicial Court. It is the business of the people of this State, acting through their representatives, to say what is an emergency. It is the business of the people of this State, acting through their representatives, to say what is a public use, and the fact that the courts of the land have taken this legislative function, that they have asserted to themselves the right and privilege of sharing with the Legislature in passing laws for the people, has caused much of the trouble through which we have gone in these last few years.

Sir, in spite of all that has been said within these walls against the Legislature, I am proud of the Legislature of Massachusetts. I have the greatest confidence in the uprightness of purpose of its members. I have admiration for the wisdom that has given to us a magnificent code of laws, the model for all the States of the land, and I remember it has come to us under the complete authority John Adams gave when he wrote our Constitution, barring from legislative power only the natural rights of man, barring only the Declaration of Rights we have been discussing. He said, and the Constitutional Convention of 1780 approved his words, and the people of Massachusetts approved his words: "The General Court shall have full power to make all manner of reasonable laws". I do not give all the wording, but the permission

was absolute. He trusted the people. The Parliament in all these years has been trusted by the people of England, without limitations. Go to your Blackstone. See how he exhausted language in trying to show the illimitable character of the Parliament of England. That was what John Adams meant to give us, and that was what we lived under until another branch of the government asserted its right to share in legislation.

Mr. SULLIVAN of Lawrence: I understand the gentleman to say that, while the Supreme Judicial Court for a number of years has decided that the Legislature might determine when a public exigency existed, in a response to the Legislature fourteen years ago it denied that right. Assuming that the answer of the court warrants the construction which the gentleman puts upon it, which I do not admit, I should like to ask him if he contends that the answer of the court to the Legislature, which is not *res adjudicata*, overrules the decisions of the Supreme Judicial Court in a long line of cases.

Mr. LUCE: The history of judicial legislation in this country in the last thirty or forty years would indicate that it was no careless oversight under which the court acted in 1903 when it attempted to tell us what was and what was not an emergency. I recognize that its opinion has not the deliberate character of the decisions to which he refers, but I recognize also that the Legislature, acting under the permission of the proposed amendment, would be under the constant menace of litigation, would never know where it could proceed. Sir, asked by the citizens of my own city, I was a member this last spring of a food production committee, and from the very first day we ran up against uncertainty as to our powers. The city solicitor, the mayor, this and that one, conservative men, who wanted nothing done, said: "That is not constitutional. That is not constitutional. You cannot do it." So we found ourselves constantly hampered because we did not know our powers. I do not want the General Court to authorize the State to go into the hat business. I do not want it to engage in the manufacture of shoes. I do not want it to fix prices. I do not want any one of the hundred other things you may name. I want the Legislature to be able to decide what is best for the common welfare. I do not want the Supreme Judicial Court to decide what is best for the common welfare, and, as was said many years ago, if that be treason make the most of it. [Applause.]

Mr. CREAMER of Lynn: I should like to ask the delegate from Waltham what distinction he draws between the phrases "public use" and "public exigency."

Mr. LUCE: The courts have had frequent occasion to pass judgment upon the phrase "public use", sometimes changed into "public service." In the case of Talbot *v.* Hudson, 16 Gray, 417, the case in 1860 to which I have referred, the Supreme Judicial Court held that the determination of the Legislature is not conclusive that the purpose for which it directs property to be taken is a public use, and by reason of the court's phraseology we are accustomed so to refer to it. In this opinion the court went on to say that if the use is public the opinion of the Legislature is conclusive on the point that a necessity exists which requires the property to be taken. It is because the courts departed from this position in 1903 that it strikes me, sir, that this amendment before you is worthless.

Mr. Creamer: Is it not a fact, Mr. President, that some gentleman read here the other day, — I think it was the delegate from Milton (Mr. Bryant), — that the courts had considered the phrase "in the public exigency" to mean "in the public interest"? Now if that is true does not that leave it this way, that the phrase "in the public exigency," "wherever the public exigency requires," is a legislative question, and the phrase "a public use" is a court question?

Mr. Luce: If the courts had adhered to the position of 1860 my argument would fall to the ground. It is because in 1903 the court undertook to say what sort of an emergency would constitute a public use that I am calling this matter to your attention.

Mr. Dresser of Worcester: The gentleman's last statement is extremely important. I wish that he would give to the Convention the advisory opinion to which he has referred. If the members will look at 170 of the manual they will find there in the third paragraph from the end the quotation:

> The Legislature are sole and exclusive judges whether the exigency exists which calls on them to exercise their authority to take private property

citing the case to which the gentleman has referred and half a dozen others. If those decisions have been shaken it is essential that we know it, and I had not believed that they had. Can the citation be given?

Mr. Luce: Through the courtesy of a fellow-member I am able to give the volume and number. Volume 182, the opinion in the supplement. There you may find that six members of the court classified emergencies into four classes, the possible emergencies under which the State might be authorized to engage in the supply of fuel. They disposed of three of these emergencies by saying that these three did not constitute a public use; that is, the nature of the emergency was examined in order to determine if it was a public use. The fourth one, six of these honorable Justices construed as a kind of emergency which would create a public use, whereupon the seventh member of the court, in a dissenting opinion, said that in his judgment even the fourth line of emergencies did not constitute a public use.

Mr. Dresser: Does not that question fall where, as in this amendment, it states that these things are public uses, public functions, and thus leaves it solely for the Legislature to decide the existence of the emergency or exigency?

Mr. Luce: According to the opinion in this volume to which I referred you, if it were assumed this coming winter by the Legislature that a public emergency or exigency existed calling for the purchase of coal in order to supply the freezing people of this State, it would be open, under this opinion, for the Supreme Judicial Court to say such a state of affairs did not constitute an emergency. Therefore it would be possible for the man who objected to such use of the public funds to go to the court at any time and, citing that opinion as a precedent, to secure a judgment of the Supreme Judicial Court that a state of affairs did not exist warranting the application of the amendment in question.

Mr. Lomasney of Boston: Will the gentleman read the kind of emergency which the Supreme Judicial Court said might be a public use, and then I will ask him if the amendment appearing in doc. No.

363 is passed would not that meet the objection of the Supreme Judicial Court, and could not they make the measure applicable to the decision?

Mr. Luce: The gentleman, I think, fails to get my point. No. 363 does not define what is an exigency or what is an emergency. The definition of what is an exigency or what is an emergency would be undertaken by the Supreme Judicial Court as was done in 1903 in the matter of which the gentleman inquires. Now I would suggest one of these problems. The Supreme Judicial Court undertook to say whether if the people were freezing the State or the city or town might furnish fuel, and some of the Justices thought that if perchance the scarcity of coal made it more expensive to maintain the paupers of the State, then the furnishing of fuel might be construed as a public function.

Mr. Bryant of Milton: May I make a short statement with the consent of the gentleman speaking? I think we are getting rather confused here between two legal terms that have received definition by our Supreme Judicial Court; I mean the term "public exigency" and the term "public use". They are entirely different terms, they are not synonymous in any way and they are treated by our court entirely differently. The term "public use" can be expressed in a very few words. It means simply that the Legislature cannot take A's money and give it to B. The Legislature cannot take money from the State and give it out for what is not a public purpose but for what is simply a private purpose. That is obvious, it seems to me. You ought not to be able to take A's money and give it to B. You ought not to be able, except in case of emergency or some such situation, to tax the whole people of the State for my benefit or that of some other individual. You ought to be able to use the public money collected by taxation for public purposes only. That is one of the foundations of our whole Constitution. Now take the phrase "public exigency." Once having established that the general purpose in mind is a public purpose, that you are appropriating taxation money for what would be considered to be a public purpose, — for instance, for a State police or for anything that properly affects the public and does not affect any particular group of the public or any individual, — once having established that, then it is for the Legislature to say whether it is for the benefit of the public so to spend the money; and that is the distinction between the words "public use" and "public exigency." That is why the court decides whether the use is public and the Legislature decides whether, assuming that the use is public, the exigency exists by which the public would be benefited. I submit that is a statement of our present law and ask the gentleman whether his amendment which he now presents, to make the Legislature determine what is a public use, would not go far beyond the present amendment and allow the Legislature to appropriate public funds for private purposes.

Mr. Luce: Undoubtedly it would; and that is the reason why I have no overweening confidence that it will win a unanimous vote from this body. Undoubtedly it would, but it seemed to me that before we gave to the people an amendment which strikes me as of so little value, this Convention ought to know and the records ought to show we realized that we still were leaving it to the Supreme Judicial Court to legislate for the people of Massachusetts by determining when an emergency exists.

Mr. James J. Brennan of Boston: I should like to ask the gentleman from Waltham in the first division if , according to his own argument and answering the gentleman from Milton, who has just taken his seat, he will agree to strike out, in Convention document 363, line 4 entirely, and the last part of the word "distress" in line five, so as to leave out the fourth line of that resolution entirely, including the whole of the word "distress".

Mr. Luce: I do not think that even then the resolution would be a fitting one for me to pass judgment upon. I do not conceive it to be my duty here to decide whether dealing in foods or dealing in hay or dealing in boots and shoes or vessels or anything else is a wise thing. What I tried to point out is that from my personal conception, — perhaps I am alone in that opinion, — it is the duty of the Legislature to decide those things, and not the duty of the Constitutional Convention; that the duty of the Constitutional Convention is to say how much power the Legislature shall have. Build the framework of Government on broad lines, and not by minute details undertake here to anticipate the action of the gentlemen who ordinarily sit within the walls of this chamber.

Mr. French of Randolph: I should like to ask the gentleman if it is not tolerably clear from the language of the court which he has read that it was not the word "emergency" that the court was undertaking to construe, but the words "public use".

Mr. Luce: My reading of this opinion is quite to the contrary, — that throughout the emphasis is laid upon the question whether an emergency did exist.

Mr. French: It seemed to me rather that it was whether it was such an emergency with respect to a public use.

Mr. Luce: The opinion in effect says the court cannot tell whether it is a public use or not until the court has ascertained whether that emergency exists which would create the public use. The nature of the emergency is a condition precedent to the determination of the other question. The court held it in this opinion to be within its power to determine what sort of an emergency there was.

Mr. French: As I understood, the court admitted the emergency but declined to say that it was for a public use.

Mr. Luce: The court said that three kinds of emergency were not such as to create a public use. Six of them said that a fourth kind of emergency was such that it might create a public use. The seventh man said in effect that no kind of emergency in the matter of coal would create a public use.

Mr. Clapp of Lexington: Suppose, sir, this proposed amendment had been part of the Constitution when the question was put up to the Supreme Judicial Court, have you any doubt whatever that the court's decision would have been the opposite of what it was and they would have said that the proposed legislation would be valid?

Mr. Luce: The courts continually look back into past centuries to determine what is the law for to-day. They try to measure the Massachusetts of to-day by the conditions of Massachusetts a hundred years ago. They say that what was then customary and useful and a public use, is the yardstick we should use to-day to determine what is customary and for the public welfare. And my criticism, sir, is aimed at the point that the courts have their eyes looking backward and not forward.

Mr. Clapp: The gentleman started his argument by saying he objected to the proposed amendment because the first portion of it did not change substantially or change at all the existing law. Now he has to admit that had that been a part of the Constitution in 1903 when the Legislature sought to enact this legislation which labor wanted, the law would have been valid, — that the legislation would have been possible. I say, therefore, that this shows that the first part of this resolution does amount to something.

Mr. Lomasney of Boston: I ask pardon; I did not catch the point. I did not want to interrupt; I wanted to ask what were the four points? Will he enumerate the matters specifically? What were they?

Mr. Luce: The court said the first of them did not call for legislation. The general subject of this decision is the power of the General Court to permit the Commonwealth or its municipalities to establish and maintain fuel and coal yards for the purpose of selling coal, wood or other fuel generally. Now the first question they dismissed as requiring no reply, virtually; the second, much to the same effect. The third question is what I think will meet the gentleman's contention.

Mr. Mancovitz of Boston: May I ask the gentleman if, in line 10, were inserted the words "the General Court shall be the sole judge of what a public emergency" etc., "is" — would he then contend that the Supreme Judicial Court had the power to declare what is and what is not an emergency?

Mr. Luce: The purpose of the words suggested by the gentleman is entirely within my approval. Whether they would meet the object or not would be too much for any man offhand to undertake to say. What I am seeking is that such purpose shall not be restricted here to a measure requiring us to determine what is for the public welfare, but shall be so phrased that the Legislature shall determine what is for the public welfare.

Mr. Quincy of Boston: I should like to ask the gentleman from Waltham, simply for the purpose of clearing up this very complicated but extremely interesting situation, whether this is not the case: That the brief but very broad and inclusive language of his proposed amendment would enable the General Court to do everything which the original report of the committee on Public Affairs proposed to authorize it to do, everything which the amendment now reported by the committee on Form and Phraseology authorizes the Legislature to do, and also a great deal more?

Mr. Luce: The gentleman from Boston states the case accurately.

Mr. Arthur H. Lowe of Fitchburg offered the amendment cited at the beginning of the chapter.

Mr. Lowe: I do not think it is necessary for me to take any time to argue the reasonableness of this amendment. Every one will see readily that it would be necessary to have the necessaries of life in order to distribute them and sell them. Consequently it seems to me that it is necessary only that the State should have the authority to produce.

Mr. Collins of Amesbury: I do not propose at this time or any other time to discuss the merits or demerits of this resolution. My purpose, sir, in securing the floor at this time, is to try to gather some in-

formation which will enable me to vote in an understanding manner at least upon this proposition. I would be thankful if any member of this Convention, — and I am going to assume that an unfortunate condition exists, — if any member of this Convention can show me how any resolution, either like this or any measure unlike it, how anything that the Legislature of Massachusetts may enact into law with a permit of this Constitutional Convention, if you please, to allow it, — anything which they may pass — will benefit the conditions which we assume are now in Massachusetts or soon may exist. Or in other words, what can the Commonwealth of Massachusetts do toward controlling the production of coal in Pennsylvania or the raising of potatoes in Maine or the gathering of wool in Ohio or the raising of beef in the western States? We have nothing to do with them. The proposition as I understand it here to-day is that this will reduce the price. Sir, Massachusetts long since has ceased to be, if ever it was, an agricultural proposition. Agriculture has been practically eliminated from Massachusetts. We have seen a great deal of those who could tell the farmer something about his business, something about how he could produce this, that and the other, but eventually they have been put into the discard. Your milk production in Massachusetts to-day, which is one of the vital factors, one of our absolutely essential factors necessary for the propagation of human life, has been eliminated to the extent that only 30 per cent of your milk consumed in Massachusetts to-day is produced in Massachusetts. What has become of the rest of it? Too many men who know more about other people's business than they do about their own have undertaken to lead the procession, and where the blind lead the blind, sir, the whole outfit is headed for the ditch, and that is where they landed.

Now I am an earnest seeker after knowledge and I want some man to tell me why, if this goes through, it is not a club, if you please. Some people call it a deterrent, but if it is not a club held over the innocent middlemen, what is it? I am not a middleman and I have no friend who is in the retail business, but I know, sir, the innocent man upon whom this thing will fall is the man who has hard work to keep his credit at the local bank. Is that the man you are after?

What I want to know is how this proposition is anything else than a sop; how it is worth the paper that it is printed on. Why, we have to-day upon the statute-books absolutely this same proposition. Now let us be fair about it. If you want to put the Commonwealth of Massachusetts into a wide-open socialistic proposition, so that everybody can do everybody else's business and make a job for practically every man who has not one, let us be fair and say so. But if you want to do something to benefit the proposition, then take heed to what Mr. Hoover says. He says we cannot touch the beef proposition. Mr. James J. Storrow says we cannot touch the fuel proposition. You are lucky if you get coal at any price. Mr. Garfield says we cannot touch the flour proposition. Well, Mr. President, what proposition can we touch? Is it anything but a political subterfuge? Is there any man here who believes that this resolution means anything but something to go out to fool and to befuddle the dear people who pay half a million dollars for five months' service, — if it is service, — of this select Convention; not the ordinary Legislature, — Oh, no! Oh, no! — but a Convention, sir, of which a quarter part, provided by this in-

competent Legislature, should be good, bright, brainy, brilliant men, and they are. Now what have we accomplished and what are we seeking to accomplish here? I shall be thankful if any man in this Convention will tell me honestly and earnestly and squarely what there is in this resolution or anything that looks like it.

Mr. SULLIVAN of Lawrence: I do not rise to answer the question of the gentleman from Amesbury. If he had been in his seat listening instead of out in the lobby talking during many of the days past when this matter has been under discussion, he would be able to see at least some merit in the resolution that is now before us. Let me add that we are all glad that the gentleman has transferred the scene of his discussions from the smoking-room to the floor of the Convention.

What I purpose to discuss is the rather startling statement that has been made by the gentleman from Waltham (Mr. Luce). It has been our usual experience that whenever he contributes toward a matter under discussion, he clears the air. But this afternoon he has contended for an interpretation of a decision, or rather of an advisory opinion of the Supreme Judicial Court, which, in my opinion, is not justified. The tenth article of the Bill of Rights provides that "whenever the public exigencies require that the property of any individual should be appropriated to public uses, he shall receive a reasonable compensation therefor." Under this article there have been two distinct lines of decisions, one with reference to the words "public exigencies," and the other concerning the words "public uses." As has been pointed out by the gentleman from Milton (Mr. Bryant), the Supreme Judicial Court in many cases has decided that the Legislature is the supreme and only judge of whether a public exigency exists. On the other hand, the court frequently has undertaken to define what is and what is not a public use. In the remarks supporting his amendment the gentleman from Waltham says that in its answer to the Legislature which appears in volume 182 of our reports, the Supreme Judicial Court has substantially overruled its decisions in the prior cases, and has taken upon itself the right to say in each case whether the Legislature is justified in its determination that a public exigency exists. If the contention of the gentleman were supported by the facts, we would have here a gross case of what is called judicial legislation and the castigation which the gentleman has given the court perhaps would be deserved. But let us see what the facts are.

The court was asked to answer four specific questions. The first was: "Is it within the constitutional power of the Legislature to enact a law conferring upon a city or town within this Commonwealth the power to purchase coal and wood as fuel, in excess of its ordinary requirements, for the purpose of selling such excess, so purchased, generally to its inhabitants or others (1) at cost, (2) at less than cost or (3) at a profit?"

The second was whether the Legislature might authorize a city or town "to purchase for the purpose of sale generally and to sell generally to its inhabitants or others . . . coal and wood as fuel."

In the third the court was asked whether the Legislature might authorize cities and towns to establish and maintain coal and wood yards for the above purposes. The fourth question was: "If the answer to any of the foregoing questions be in the negative, does the power so declared as non-existent exist in the case of an extraordinary emer-

gency, and may the different cities and towns be constituted judges of said emergency?"

The Supreme Judicial Court answered the first three questions in the negative. Their answer to the fourth question was also in the negative, with the slight qualification that in case of an anticipated possible famine the power suggested might be given.

An examination of the opinion shows that the court was not concerned with the interpretation of the words "public exigencies." Let me quote:

> It is established that under our Constitution private property cannot be taken from its owner except for a public use. This is equally true whether the property is a dwelling-house taken by right of eminent domain, or money demanded by the tax collector. The establishment of a business like the buying and selling of fuel requires the expenditure of money. If this is done by an agency of the government there is no way to obtain the money except by taxation. Money cannot be raised by taxation except for a public use.

This opinion is in complete harmony with the previous decisions of the Supreme Judicial Court, the doctrine of which is summed up in *Miller* v. *Fitchburg*, 180 Mass. 32, at p. 37, as follows:

> It cannot be questioned that it is for the Legislature to decide whether a public exigency or necessity exists, . . . although it is for the court to determine whether the use is or is not a public one.

We have then an opinion from the Supreme Judicial Court that the Legislature cannot authorize cities and towns to sell coal and wood or to establish coal and wood yards, because that is not a public use. For that reason, — because of that want of power in the Legislature, — the demand has sprung up for a constitutional amendment such as that before us, providing that the Commonwealth and the cities and towns therein, during time of war, public exigency, emergency or distress, may take and provide a sufficient supply of food and other common necessaries of life, and to furnish shelter. It is suggested by the gentleman from Waltham that, instead of adopting that amendment, we should adopt an amendment providing that the Legislature should determine what is a public use. He says this amendment is futile. Whether or not this is futile, his is dangerous. It leaves matters in the control of the Legislature which are not contemplated by this Convention. This resolution refers to the providing of fuel and food and shelter and other necessaries of life. It says so in unmistakable terms. If, as he suggests, the Legislature be authorized to declare in any case what is a public use, the power thus acquired may sometime be used to justify an authority in the Legislature which is not contemplated by this Convention. No man could feel secure in the possession of private property. If we increase the power of the Legislature, let us restrict it to the objects we have in view. Let us not by too wide a grant give opportunity for oppression and tyranny.

Mr. George F. Willett of Norwood offered the amendment cited at the beginning of the chapter.

Mr. Willett: My reason for offering this amendment is that the policy of the Commonwealth may be clearly defined as against the policy of socialism. It is possible that we may be deterred from taking action here which we otherwise would take, unless a conservative policy in this connection is clearly defined, and I hope that this declaration may be

accepted to precede the amendment as drawn and offered in this resolution No. 363.

Mr. Sawyer of Ware moved the previous question.

Mr. O'Connell of Boston: I hope the gentleman will not press his motion at this particular time. I have sent an amendment to the Secretary's desk which I hope may overcome the difficulties suggested by the gentleman from Waltham. I for one do not wish to see our Supreme Judicial Court legislating on matters of this kind, and if this Convention, by a short delay, can obviate and overcome the difficulties suggested, then I think it is our duty to clear the situation and I hope the previous question will not prevail.

Mr. Adams of Quincy: I believe that the amendment which has been introduced by the gentleman in the first division (Mr. Luce) is by all means, by all odds, the most important measure which has been introduced in this Convention. I submit that to close the debate now would be an absolute wrong to our constituents, and I trust that no such effort will be made until the whole subject has been examined. There has been only a very small part of it touched upon as yet.

The discussion of the resolution was resumed Thursday, October 11.

Mr. Merriam of Framingham: On this proposition, as I understand it, a motion has been made for the previous question. I sincerely hope that this motion will not prevail. In the discussion yesterday certain matters were mentioned which seemed to me of such vital importance as to require further argument before the vote is taken upon them. I refer particularly to the remarks made by the delegate from Waltham (Mr. Luce) relating to the power of the courts and seeking to restrict the power of the courts in determining what is a public use. This question has hardly been scratched beneath the surface. It is fundamental in its character and should receive the serious consideration not only of the lawyers of this Convention but of every delegate. I believe, much as I respect his ability and his motive, his purpose in this matter, that the delegate from Waltham has utterly misstated the power of the court in this important particular. As I read the decisions of our court there is in this case simply the perfectly logical effort to discriminate and distinguish between what are essentially questions of fact and what are and must be questions of law. In this particular it is the function of the courts to determine matters that are matters of law and to permit the Legislature or the town-meeting or the city council, as the case may be, to determine questions of fact. If my construction is true, this power of the courts should be maintained. I particularly regretted to hear the gentleman from Waltham refer to the courts as bodies sitting looking backward. That, Mr. President, is an unfair criticism of the position of the courts of Massachusetts. In certain particulars, where the courts deal with vested rights and seek to determine definitions of words and phrases, they must of necessity look backward. But there is one important particular, and no one knows it better than the gentleman from Waltham himself, where the courts distinctly look forward. I refer to the power of the courts in the construction of statutes. It was the purpose of the gentleman from Waltham early in this Convention to ask that the debates of this Convention be taken

verbatim so that the courts in construing our work could see what was in mind, what the Convention had in mind, in passing this or that amendment.

Mr. CREED of Boston: I sincerely trust that the previous question will not be ordered. Thinking over the speech of the gentleman from Waltham which already has been alluded to by the gentleman from Framingham, I, like every other member of the Convention who gives great weight and respect to his opinions, marvel, at what he said, that this amendment which was offered by my friend from ward 5 of Boston (Mr. Lomasney) is valueless, that the first part is of no value and the last part is superfluous; that the resolution regarding which we changed our position is in fact as if it were not. Now I should like to have that debated in the Convention and clear my mind as to whether or not it is of any value, because my own position on the matter, Mr. President, is this: I am opposed to the Commonwealth becoming a socialistic State; I am opposed to the Commonwealth becoming a trading corporation. Any man who is interested in a banking institution or knows anything about the methods of a bank knows that no director of a bank, who holds that fiduciary relationship to the depositors in the bank, will vote money to any retailer or middleman if he knows that the Legislature has the power to wipe out his business. He can borrow money now on unsecured notes if he has the good-will of a going concern, a good location, is honest and industrious and the bank directors have confidence in his integrity. But if this amendment went through to make the State a trading corporation, the result would be that they would want collateral or other security or endorsers with strong financial responsibility. So I am opposed to going to that extreme.

On the other hand, Mr. President, it seems to me that we should consider carefully the question raised by the gentleman from New Bedford (Mr. Theller), who unfortunately is away this week on a leave of absence by order of the Convention, that we should not wait until an abrupt, sudden emergency is aroused by something that occurs in this Commonwealth, — that when we see the storm coming on the horizon we should be prepared to anticipate anything that would hurt the entire people of the Commonwealth. And so, Mr. President, as I am here trying to legislate for the best interests of the Commonwealth, I hope that the previous question will not be ordered and we will have this matter cleared up and we shall find if the weighty opinion of the gentleman from Waltham is correct and that the amendment which we voted for is defective, or whether my friend from ward 5 can answer the gentleman from Waltham and show that it is of value.

Mr. PILLSBURY of Wellesley: I rise to express my entire concurrence with what has been said by the gentleman last up (Mr. Creed) and my earnest hope that the previous question will not be ordered at this stage on this most important measure, nor until the Convention can act upon it knowing what it is about. At the present time that would be impossible.

Mr. SAWYER of Ware: I should like to call the attention of the Convention to the fact that a vote for the previous question now is a vote whether or not we shall put on the ballot this fall the amendment relating to the food question. If you vote down the previous question the matter goes over; it probably cannot go on the ballot. If you

sustain the previous question it is possible that the matter will be engrossed to-day, come back to us this afternoon and be ordered on the ballot this fall. When we first entered the war Governor McCall sent a message to the Legislature showing the urgency of some dealing with the food situation. The Legislature found that, under the present situation, it could not deal satisfactorily with the situation. It was hoped sincerely by the friends of labor and by others who were interested in patriotic motives for our State that this Convention would pass to a ballot this fall some amendments to the Constitution that would enable the next Legislature to deal with the food situation.

On a rising vote the motion for the previous question was negatived, 73 voting in the affirmative and 100 in the negative.

Mr. GEORGE of Haverhill: I am very much interested in the remarks of the last speaker (Mr. Sawyer of Ware) who says that the Legislature was not sufficient to deal with this momentous question. We were told the other day by our friend from Newton (Mr. Anderson) that he should feel that it was criminal neglect if we should fail to put this proposition on the ballot. I have before me an extract from an address delivered by one of the distinguished lawyers of Massachusetts and a man who represents the people, and that is Frederick W. Mansfield, at Hudson last evening, and I want to quote for the relief of the gentleman from Newton and also the gentleman from Ware his remarks:

Since May 25, 1917, the Governor has had more power to keep down the high cost of living and regulate the prices of food, clothing, shelter and other necessaries of life than any emperor or ruler ever had. On that day chapter 342 of the Acts and Resolves was approved by himself, and it gives him the power to investigate the holding of food in cold storage warehouses, the supplying of coal, food, clothing and materials for shelter. It gives him power to seize any and all of these articles if he deems it necessary, to seize railroad cars, locomotives, motor trucks, trolley-cars, steamboats, railroad lines and wharf property for the purpose of distributing such necessaries of life to the people. It gives him power to regulate prices and fix the maximum charges for which the necessaries of life shall be sold. It gives him more power than Mr. Hoover or Mr. Garfield have at the present time.

Now that act passed the Legislature last year and I presume the gentleman from Ware, who represents the people, voted for it; and yet he stands up here and says that the Legislature of Massachusetts cannot deal with these emergency situations.

Mr. SAWYER: Stating my position as a member of the Legislature, we in the Legislature were guided by the opinion of the Attorney-General of the State, which is directly contrary to the statement that the gentleman from Haverhill has just been reading. The question as to who is the better interpreter of the Constitution, Mr. Mansfield or Mr. Attwill, is a matter for the people themselves to judge.

Mr. GEORGE: I called up the Attorney-General this morning and I asked him if he saw chapter 342, entitled: "An Act to provide for the better defence of the Commonwealth in time of war," and he told me he had seen it, and that while he had not given a written opinion he had given an offhand opinion that he thought it was constitutional and perfectly proper in time of war. Now, then, inasmuch as we are in war and probably will be for some time to come, there is no difficulty about the situation of to-day, not the slightest. So that if anybody thinks or has been lying awake nights thinking that he has got

to get this amendment through at this moment and put it on the ballot at this election rather than to wait till April or some other time, why, he has been losing his sleep for nothing.

Mr. SAWYER: When the Attorney-General gave his opinion to the legislative committee last winter he entered into it a little more fully than he evidently did on the phone this morning. He did state in substance, as the gentleman has said, that the Governor, as a war power, could do this, but he said that it would be the next thing to martial law, and he did not think he could do it except under occasion of great emergency. The thing that the Legislature desired was that there might be something for relief without going to this extreme.

Mr. GEORGE: The subject-matter referred to by the gentleman from Ware is another proposition. He has got the babies mixed. That was a political measure that was discussed at that time. When you come to discuss a political question and a question relating to the war, of course it has an entirely different bearing. Now this is a war measure and the Attorney-General, while I was not authorized to say this, said over the phone that the Governor and Council could do almost anything in the time of war for the defence of the Commonwealth or for the benefit of the people resulting from the war. Now that is what we are dealing with, — this time of war. Now section 6 of this Act that Mr. Mansfield, the gentleman's leader, refers to, is very interesting:

SECTION 6. Whenever the Governor shall believe it necessary or expedient for the purpose of better securing the public safety or the defence or welfare of the Commonwealth, he may with the approval of the Council take possession: (a) Of any land or buildings, machinery or equipment. (b) Of any horses, vehicles, motor-vehicles, aëroplanes, ships, boats, or any other means of conveyance, rolling-stock of steam or electric railroads or of street railways. (c) Of any cattle, poultry and any provisions for man or beast, and any fuel, gasoline or other means of propulsion which may be necessary or convenient for the use of the military or naval forces of the Commonwealth or of the United States, or for the better protection or welfare of the Commonwealth or its inhabitants. He may use and employ all property so taken possession of for the service of the Commonwealth or of the United States, for such times and in such manner as he shall deem for the interests of the Commonwealth or its inhabitants, and may in particular, when in his opinion public exigency requires, sell or distribute gratuitously to or among any or all of the inhabitants of the Commonwealth anything taken under clause (c) of this section and may fix minimum and maximum prices therefor. He shall, with the approval of the Council, award reasonable compensation to the owners of any property of which he may take possession under the provisions of this section and for its use, and for any injury thereto or destruction thereof caused by such use.

Now, Mr. President, I am in favor of the proposition that was introduced as an amendment by the gentleman from Boston the other day. I am not in favor of the Dutch amendment to strike out the word "exigency", because I believe that the Governor and Council, in times of emergency and distress, should have the same right to do things that they can do now in time of war. Now that is all that anybody wants except the Socialists; because we understand the first proposition to come in here was to inject the Socialist program, that is, that the government, the Commonwealth, the cities and towns, could go into business promiscuously wherever and whenever they could get a city council to vote so to do.

By a vote of 147 to 82, on a call of the yeas and nays, the further consideration of the resolution was postponed until the next matter in the Orders of the Day had been disposed of.

Subsequently, at the same session of the Convention, debate was resumed.

Mr. Clarence W. Hobbs, Jr., of Worcester offered the amendment cited at the beginning of the chapter.

Mr. Hobbs: It is with some diffidence that I call the attention of the Convention away from our dearly loved struggle with the anti-sectarian amendment to the consideration of this amendment relative to food. This proposal to amend the Constitution has had a very stormy passage in this Convention. At the last stage the Convention took an extremely pronounced action, adopting a proposition that in many respects was entirely different from the one which the committee had reported. That that proposition must have had some merit is unquestionable if we consider only the fact of the many and varied bedfellows that it succeeded in bringing under the same counterpane. When a proposition commands at the same time the support of the radicals and of the conservatives, then that proposition must possess some extraordinary virtue. I am driven to believe that the two sides did not support it for the same reason. The conservatives unquestionably supported it because they knew that it meant little or nothing; the radicals supported it because they thought it meant a good deal. Both of those propositions cannot of course be true. From the best information that I have been able to gather, and I have consulted a number of the eminent legal minds of this Convention, the resolution which the Convention adopted at its last session accomplished little or nothing more than a restatement of the present law. One lawyer even gave it as his opinion that it might go so far as to narrow the present law.

The opinions of the Justices never have gone to the extent that in a time of great emergency the Legislature could not take such action as would replace the breaking down of the ordinary methods of supplying the necessities of life. Therefore the amendment which the Convention adopted at its last session does this much: It modifies to some extent the rule laid down in the case of Lowell *vs.* Boston, at the time of the Boston fire, that the Commonwealth could not authorize cities and towns to borrow money which was to be repaid by funds raised by taxation to provide shelter for persons who had been burned out by some great conflagration. That rule the amendment probably, in some sort, would modify. It doubtless would furnish constitutional warrant for the emergency relief measures that were undertaken in the Salem and Chelsea fires; it doubtless would furnish constitutional warrant for the emergency war legislation, and in both those cases it is very doubtful if constitutional warrant is needed. That is all it would do. Therefore the support that this proposition at once received from those who really do not desire anything at all of any consequence to be done is not surprising. Nor is it surprising that the other side at once have set about trying to open it up further.

This proposition has been amended, and has been the subject of a number of amendments which have been moved. I think perhaps it might be as well to start with a consideration of those amendments and see what they accomplish. Of course the proposition is in the hands of the Convention. They can build upon the foundation of the amendment moved by the gentleman from Boston (Mr. Lomasney), or they can go to one of the substitute resolutions that have been offered.

I was of the opinion at one time, and some members of the committee were of the opinion, that something drafted along the lines suggested by the gentleman from Boston might be the proper solution of this question. The committee decided ultimately on a different proposition, and it is in order that something along the original lines which the committee suggested should be before the Convention as an alternative, and also at the desire of the chairman of the committee, that I have moved the amendment which has just been read and which I shall discuss a little later.

Amendments have been offered to the resolution as moved by the committee on Form and Phraseology.

The first one, moved by the gentleman from Norwood (Mr. Willett), is a preamble which adds nothing and I think takes away nothing from the report. As to whether the Convention is prepared to endorse so broad a general statement as that the material welfare of the people depends upon fostering all the industries and enterprises of the people, is something of a question, but I presume that what he would have said should have been all *proper* industries and enterprises of the people. At all events the preamble will add nothing and take away nothing from the substance of the resolution. The only objection I have to it is that it probably is superfluous.

As to the amendment offered by the gentleman from Fitchburg (Mr. Lowe), to insert the word "production", I should object to that on the ground on which I objected to similar language being inserted in the committee's report, namely, on the ground that the committee have endeavored to deal with that matter in another resolution, and that to spread the scope of the resolution too broad tends needlessly to diffuse the issue.

As to the amendment offered by the gentleman from Quincy (Mr. Blackmur), to insert after the word "maintenance", the word "preservation", that probably is not an objectionable change. Inasmuch, however, as the resolution offered by the committee on Form and Phraseology is pretty broad in its language, using the words "to provide", it probably, by implication, is broad enough to cover that amendment.

The amendment moved by the gentleman from Winchester (Mr. Dutch) and the amendment moved by the gentleman from Hopkinton (Mr. Carr) are amendments that illustrate diametrically opposite views. The former seeks to keep it in the form in which the gentleman from Boston originally moved it, that is to say, a proposition that means little or nothing. The amendment of the gentleman from Hopkinton seeks to open it wide, so that in effect it authorizes the Legislature to do anything and everything. The scope that the Convention desires to give it will be indicated amply by its votes on these amendments. If it is desired to keep it little, the amendment offered by the gentleman from Winchester is the one to adopt. If it desires to open it a little further, the present form of the resolution is the one to adopt, and if it desires to open it so that it is as broad as the heavens, the amendment of the gentleman from Hopkinton is the one to adopt.

As to the amendments offered by the gentleman from Boston (Mr. Balch), I think they have really the same tendency, except that they give the Legislature specific authority to declare that war or public emergency exists, but by striking out the word "exigency", it retains

the scope to the same extent practically as it was when it left the hands of the gentleman from Boston.

As to the amendment offered by the gentleman from Boston in this division (Mr. Quincy), the purport of that is the same as the last amendment offered by the gentleman from Boston in the first division, that is, to give the Legislature the power to determine what are public functions and what are public emergencies. That again opens the proposition out.

As to the amendment offered by the gentleman from Greenfield (Mr. McLaud), I understand that he is to speak on this matter and I think that he probably will explain his own amendment.

The amendment offered by the gentleman from Brockton (Mr. Clark), — adding at the end: "The Legislature may, during times of war, emergency, distress or public exigency, provide for control and regulation of the distribution, storage and sale of food and other common necessaries of life", — probably is unnecessary, because I think all of that is covered by the words "to provide", contained in the amendment as presented by the committee on Form and Phraseology and in the original amendment offered by the gentleman from Boston (Mr. Lomasney).

Now as to the substitute amendments of the gentleman from Wellesley (Mr. Pillsbury) and the gentleman from Boston (Mr. Cusick) which are printed in the calendar. The one offered by the gentleman from Wellesley is in large measure a restatement of the same proposition as that offered by the committee on Form and Phraseology. It omits the declaration of a legislative duty, and it substitutes for it an enabling provision. The two propositions are probably not greatly different except in psychological effect upon the Legislature. A legislative duty means very little. The constitutional declaration that it is the duty of all men to worship the Creator at stated periods is not a proposition that the Legislature ever has undertaken religiously to enforce. And in the same way I do not think that a great difference is made by stating this as a power or by stating it as a duty, except as that may influence the Legislature to action.

As to the amendment offered by the gentleman from Boston in the third division (Mr. Cusick), the result of that amendment is very like that of the amendment offered by the gentleman from Winchester (Mr. Dutch), that is, to strike out the words "public exigency".

Now I come to the proposition offered by the gentleman from Waltham (Mr. Luce), which is to replace the amendment by this language: "The General Court may determine what is a public use". That proposition is so much wider than anything the committee considered that it is with great difficulty that I can explain to the Convention its precise relation, except that its scope is so magnificent that it covers nearly the entire area of State government, and, as compared with the resolution offered by the committee, the relative dimensions are as those of a drop of water to the Atlantic Ocean. It gives the Legislature power to define what is a public use. Thereby the Legislature is invested with complete power to use its discretion in all acts coming under the great power of eminent domain and the great police power. It removes absolutely all restraint of the courts, and leaves in the Constitution, as limits on legislative activity, merely such limitations as are provided expressly in the Bill of Rights elsewhere and in

the limits that are provided for the exercise of the power of taxation. It is a far broader power than I had conceived this Convention was apt to extend, and when I survey the magnificent scope of this amendment and the time that this Convention has spent in debating the difference between "emergency" and "public exigency" it is very hard for me to believe that the Convention is prepared to go to that extent. If that is adopted there can be no question as to the State's power to do everything that the amendment as reported by the committee or the committee on Form and Phraseology contemplates, there is no question as to the power of the Legislature to do everything that should be done under the amendment as reported by the committee, — and a great deal more besides. If socialism possibly can be established by a constitutional grant of power you need nothing more than is contained in that article to allow the Legislature to set up a socialistic State, because it can take every piece of property in the State, paying compensation therefor, and nobody could challenge the right of the State to take it; it can raise money by taxation, if it wishes, for the State to go into any sort of business that it chooses, not the few businesses that are contemplated by the article which we have introduced, and with that magnificent power it hardly can be thought that any further amendments dealing with the power of the Legislature really would be needed. If I heard aright the argument of the gentleman from Waltham, his idea is to establish in this Commonwealth a government founded upon the government of England, that is to say, a legislative government founded upon the parliamentary government of England. It is questionable whether that is an experiment that is apt to meet with the approval of this Convention. I still am of the opinion that our system of a written Constitution, of limitation of powers and of checks and balances, is after all a proposition that has some merit, and not a thing that should be discarded with such rashness as this article of amendment would accomplish.

Mr. Quincy of Boston: I merely desire to ask the gentleman at this point, in order to have the whole truth laid before the Convention, whether it is not also the fact, speaking generally, that all of the governments of the countries of continental Europe to-day enjoy and can exercise, at their discretion, the same powers which the amendment of the gentleman from Waltham would give to the Commonwealth of Massachusetts.

Mr. Hobbs: I do not feel competent to speak for all of the governments of Europe. Some of them have established governments very much on the English model, but I think that many of them have restrictions and are not at liberty to amend their Constitution without authority from the sovereign. I am speaking now in very general terms, because Europe is a fairly large place and comprehends many governments; but there are a number of the governments of Europe that have Constitutions framed on the English model, the theory of the English model being the preëminence of the legislative power and a combination of the legislative with the executive power.

Mr. Anderson of Brookline: I wanted to be quite sure whether I understood the gentleman correctly, stating that the adoption of the proposed amendment of the gentleman from Waltham now in the Chair (Mr. Luce) would operate as an extension of the police power. Undoubtedly it would operate as an extension of the power of eminent

domain to any field that the Legislature determined to be a public use, but how would it affect the extent and nature of the police power?

Mr. Hobbs: I had supposed that the police power as granted in the Constitution was already quite sufficiently broad. I do not remember the exact language in which it is framed, but if I mistake not the only limitation on the police power is that it may be exercised in a reasonable manner.

Mr. Adams of Quincy: Will the gentleman be so kind as to point out to me where in the Constitution the police power is granted to anybody?

Mr. Hobbs: I have not a copy of the Constitution.

Mr. Cusick of Boston: I should like to ask the gentleman if he does not consider that the police power is a common law doctrine.

Mr. Hobbs: It always is somewhat doubtful in speaking of constitutional questions as to how far we have a common law Constitution. Unquestionably some of the powers of government were recognized at common law, and undoubtedly the common law contained some cases bearing on the extent of the police power before the adoption of a written Constitution. In answer to the question of the gentleman from Quincy, part 2, chapter 1, section 1, article 4 of the Constitution I think is the section which generally is regarded as being the grant of the police power:

> And further, full power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain, and establish, all manner of wholesome and reasonable orders, laws, statutes, and ordinances, directions and instructions, either with penalties or without; so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof.

I think that is the grant of the police power, so called, that is contained in the Constitution.

Mr. Adams: Was not referring the police power to that section an afterthought? As I remember it, the whole principle of the police power was originated in New York, — in the case of the Brick Presbyterian Church, if I remember right, *versus* The Mayor of New York, — was it not? I think so; decided in 1826.

Mr. Hobbs: I fear that I am unable to give the gentleman the information he desires, because he is quoting from circumstances beyond my knowledge.

Mr. Adams: It is a very interesting question, and I believe has been very maturely discussed, and I think it came up in the Dartmouth College decision and more especially in the Charles River bridge case. My impression is that the opinion therein is long and exhaustive, and the Chief Justice then settled the whole thing for all time.

Mr. Hobbs: I think that it has been usual to refer to the police power as one of the great powers of government, and that section is the section under which the Commonwealth exercises what is commonly known as the police power. The gentleman from Quincy has taken me into fields where my feeble wing is unable to flutter, and therefore I think perhaps I might leave that question, with an attitude of due humility, I might add, and go on to a discussion of the proposition which I have introduced myself.

The proposition that I have moved is that which is found in the

calendar under the name of Mr. Theller of New Bedford, with two changes. In the first place, there has been stricken out, in section 2, the words "to buy and to sell to their inhabitants the necessaries of life and". The effect of that change is that buying will be done entirely under the jurisdiction of the Commonwealth, and it will leave to the municipality the power to sell to its inhabitants merely, and not to do trading on its own account. That was suggested by the chairman of our committee, and I am inclined to think that it is perhaps a wise suggestion.

Mr. Dutch of Winchester moved the previous question.

Mr. HOBBS: The only thing that I have further to say is that I regard this as somewhat of a strain of parliamentary courtesy.

Mr. O'CONNELL of Boston: Speaking to the motion for the previous question, which I very much regret is urged at this particular moment, I should like to call the Convention's attention to an amendment that I have offered and which will be found on page 4 of the calendar. I rather think it will meet the objections raised by the gentleman from Waltham (Mr. Luce) yesterday. At any rate, it is advanced solely for the purpose of overcoming the difficulty presented in the opinion of the Supreme Judicial Court referred to by the gentleman from Waltham wherein they reserve to themselves the right really to legislate in matters of this kind. My amendment simply fills out and completes the work of the committee on Form and Phraseology, as the Convention will note. It inserts, in line 5, the words "to be determined by the Legislature", and then strikes out, in the 6th and 7th lines, the words "are public functions", and inserts in place thereof the words "may be considered to be public functions when so determined by the Legislature." In other words, my amendment gives full supreme power to the Legislature and takes away from the court any possibility of undoing what the Legislature, in its wisdom, may see fit to do. I believe it is a fair amendment, and one that the committee can very well accept, and I should like to urge upon the members of this Convention, who are anxious to have a resolution that will accomplish that which we intend and one that will not be frustrated by any hostile court, the adoption of this amendment. I regret that the rules allow me only these few moments to discuss this very important feature.

Mr. CLARK of Brockton: This matter as it has been presented, whether it be in Mr. Theller's amendment or in the original resolution, refers almost exclusively to the buying and selling of the necessities of life, but I wish to call attention to another phase of the conditions that exist and will continue to exist. When this conflict in which the entire world almost is engaged to-day shall be terminated, undoubtedly the United States of America will be the wealthiest Nation on the face of the globe, but unfortunately, gentlemen, that vast wealth very largely will be in the hands of comparatively few people. This great concentration of wealth, combined with the greed that naturally will be associated with it, will lead to great abuses unless provision is made to prevent it. So I believe in addition to providing for the purchase and sale of the necessities of life by the State and its subdivisions we should provide also for the regulation and control of the transportation, the storage and the sale of these necessities. I have an amendment on the top of page 5, I think it is,

and I wish to ask unanimous consent to present an amendment to that, which simply designates the authority of the Legislature to carry out the provisions of the Theller amendment as well as my own, if they are adopted.

As I remarked a few minutes ago, all the matter included in the amendment practically and in the original article itself pertained to the purchase and sale of the necessaries of life. I am in accord with those features, but I believe that nearly every member in this Convention desires to avoid the necessity of the State and its subdivisions engaging in these commercial transactions when it can be done, and it appears to me that by the adoption of this amendment, whereby the Commonwealth may control and regulate the transportation, the storage and the sale of the necessities of life, you will obviate that very thing.

Mr. Butler of Brockton: I want to say as a member of the committee on Public Affairs that I am deeply interested in this measure, and I am as interested to have the report from the committee on Public Affairs accepted as my learned layman here probably would be to have the Convention accept his report on the sectarian question. We listened attentively in the hearing to the men who came before us, and they were men who represented, as they said, thousands of workmen of our State. They were men who said that an exigency existed even then, and that there should be something in the Constitution of Massachusetts that would relieve that situation at any time. The committee carefully prepared this resolution, and I believe, Mr. Chairman and gentlemen, that if the members accept it, it will be fair and just to the laboring people and to everyone through the Commonwealth. There is no city nor town in my mind that wants to go into the trading business. They simply want to have a chance to do that work when there is an exigency.

Mr. Hobbs: The amendment I have moved, as I was about to say, was in substance that printed in the calendar under the name of Mr. Theller of New Bedford. There have been two changes, one of which I had explained when the interruption came. The other was the cutting off of the addition of the Civil Service Commission at the end. That I think is advisable for several reasons. The first is that the Civil Service Commission has as yet no constitutional standing. The second is that if you give them this constitutional recognition it in a way creates a condition that might be extremely onerous on the Commonwealth in the exercise of what is in some aspects at least an emergency power. An emergency power where first you have to hold a civil service examination to qualify agents, is not a power that can be exercised with extreme expedition. For those reasons I think that that tag might well be dropped off, and for the additional reason also that it is a purely legislative matter, and I think the Legislature ought not to be handicapped. I have gone into the reasons on other occasions why I think the main proposition ought to be adopted; I shall not attempt to go into them again at this late date. The difference between this proposition and that which the committee on Form and Phraseology has reported as a substitute for that of the gentleman from Boston is the difference between one which is couched in broad general language and which, according as to whether or not you adopt the amendment of the gentleman from Winchester, means either a

great deal or else nothing at all, and one in which the powers are set forth with considerable detail. I think, too, that the proposed substitute contains some things that might well have been contained in that of the gentleman from Boston (Mr. Lomasney), for instance the provision allowing the Governor to exercise the powers in an emergency and the provision which gives explicit authority to the Commonwealth to engage in certain specific lines of activity, looking toward the preservation and conservation of food products. For those reasons, Mr. President, I hope that the amendment which I have offered will be substituted for the amended draft of the resolution of the gentleman from Boston.

Mr. ANDERSON of Brookline: At the outset I desire to pay a tribute to the committee of which I have had the honor to be chairman, and to say that in all my experience, longer than I should like to describe, I never have worked with a dozen men who showed more conscientious regard for their duty, more willingness to listen to the arguments of their colleagues, more desire to subordinate minor differences of opinion to reach a general result, than that committee. I ask this Convention now, those of you who are here, to give due weight to the results reached by a committee that so worked. I desire particularly to pay my tribute to the gentleman who last spoke, who was clerk of the committee, and who, when I was necessarily drafted into other work, assumed burdens which perhaps did not fairly belong to him, only to be treated as he was treated a moment ago.

Coming now to the matters which are before the Convention, I desire to say, and I think in that that I voice the feeling of most and perhaps all of the committee, that it would be far better for the Convention and far better for the Commonwealth to have nothing go on the ballot at the coming election, indeed to have nothing reported from this Convention at all, than to have this resolution No. 363, which is the amended form of the proposition of the gentleman from Boston. It is true that in that resolution, as originally submitted, there has been put by the committee on Form and Phraseology the words "public exigency". Either public exigency means nothing more than something which is analogous to "war emergency or distress," or it means practically everything. If nothing, it means neither more nor less than the "exigency" which the Legislature faces when it authorizes the taking of land for any public purpose. It is therefore either too broad or too narrow. I therefore repeat when I say: Vote the whole proposition down, let us have nothing which would make us ridiculous, or else report something which is thoroughly digested, something which is significant, something which grants a legislative power to deal with demonstrated evils.

Coming now to page 2 of to-day's calendar and the amendment offered by the gentleman from Worcester (Mr. Hobbs) who just spoke, let me say that that amendment which is printed under the name of Mr. Theller of New Bedford is the original draft which I presented and is exactly in the form in which I personally should like it. Section 1 presents in an unimpeachable form the emergency legislation. It is as good as, and I do not think it is any better than, the form of emergency legislation presented by the gentleman from Wellesley. It is as good as, and probably no better than, that presented in the emergency form by the chairman of the committee on Form and Phraseology. It is sufficient.

I like it better perhaps because I drew it; and as it is before you I ask you to vote for it. It is moved by the gentleman from Worcester.

Section 2 contains a provision for increasing distribution facilities, coupled, as printed, with a provision for broad municipal trading. The gentleman from Worcester, who would not go quite as far as the gentleman from Quincy who sits in front of me (Mr. Adams) and as I should be willing to go, has struck out the words "to buy and to sell to their inhabitants the necessaries of life and". I would rather have them in. But I did suggest to him, as he accurately stated, that I thought there were members of the Convention who would prefer to have them out, thus limiting section 2 absolutely to the provision of additional distribution facilities, plus the power to harvest, manufacture and sell ice. You will observe, if you look at the top of page 3, that there is no power given there for municipal or State trading, but that there is a broad power under which the Commonwealth may put "fuel and coal yards, elevators, warehouses, canneries, cold storage plants and other like means for collecting and converting, preserving, storing, selling and distributing the necessaries of life" into the same category that markets, docks and slaughter-houses always have been.

I ask the Convention therefore to adopt, as the amendment to be submitted to the people, the amendment moved by the gentleman from Worcester, sections 1 and 2, which he has explained, and which I also have just now tried to explain. If you adopt that, you have provided adequate emergency power, plus increased power of furnishing distribution facilities, without authorizing either the Commonwealth or any political subdivision thereof to go into general production or into general trading. How far, if at all, we ought to go into general production or general trading may arise somewhat later, particularly in production, when another amendment comes up, but it is perfectly clear that if it ought to be adopted at all it ought not to be adopted as a part of this resolution. I therefore ask every member of this Convention who believes that this committee is entitled to any respect and consideration for what it has done, and who believes in the substance of a constructive, progressive, and at the same time reasonably conservative measure to vote for the amendment offered by the gentleman from Worcester who just spoke.

The various pending amendments were severally rejected and the resolution as reported by the committee on Form and Phraseology was passed to be engrossed. An extra session of the Convention was held immediately to consider submitting the resolution to the people.

Mr. DRESSER of Worcester: There is one phase in the engrossed resolution which, before it goes from this Convention, ought to be changed. I understand that an amendment is not in order, but by consent I should like to suggest this which I think I am right in stating has the approval of the chairman of the Form and Phraseology Committee:

To strike out, in line 7, the words "it shall be the duty of"; to strike out, in line 8, the words "of" and "to" and "to", and insert in line 8, before the word "take", the word "may", and before the word "provide", the word "may", so that it shall read: "and the Commonwealth and the cities and towns therein may take and may provide the same for their inhabitants", etc.

The point is simply this: When this resolution is adopted, as it is now written we are in fact in "a time of war" and by this resolution we impose an imperative duty upon the Commonwealth and upon every city and town therein to take and to provide these supplies. That duty, when the Legislature meets may not be wise to perform or may be, and therefore there ought not to be the imperative duty, but there ought to be granted the full power which is expressed in "may take" and "may provide". In my opinion the resolution is not changed in substance in the slightest by this amendment, but is more exactly and more properly expressed. I trust the amendment may be adopted.

Mr. LORING of Beverly: I do not think the legal effect of the resolution is changed in any way by the amendment. Stating that it is the "duty" or stating that the Commonwealth "may" do it is practically the same thing. The mere fact that the Constitution says it is their duty to do it does not oblige them to do it if they do not feel like doing it, any more than where it states in the preamble of the Constitution that it is our duty to attend divine worship, it does not necessarily compel us to go to church.

Mr. CLAPP: I should like to ask the member who last spoke if, in his opinion, the proposed change does not make it much better draftsmanship, — put it in better form?

Mr. LORING: It seems to me it does.

The amendments moved by Mr. Dresser of Worcester were adopted, by a vote of 104 to 28.

Before the Convention had voted to submit the resolution to the people Mr. Francis N. Balch of Boston asked permission to offer the following resolution:

Resolved, That it is the sense of this Convention that the article of amendment authorizing the enactment of laws governing the acquirement, sale and distribution of the necessaries of life, was intended for emergency use only, to wit, in abnormal times or circumstances; and that it was intended the Legislature should be the sole judge of the existence of such times or circumstances.

Mr. BALCH of Boston: It is my very strong impression that what with the necessity for haste here and some confusion as to legal subtleties, this Convention is about to put into irrevocable form a measure which does not express its true will. At the same time I am satisfied that the Convention is in no mood to consider particular amendments at this point. I am satisfied that what the Convention intended to do was to make this an emergency measure, at the same time giving the Legislature power to determine the emergency. My question is: Would it be in order for me at this time, in order to find out if that is what the Convention wants, — and if that is what the Convention wants it is a very simple matter to make it plain, — would it be in order for me to offer a resolution that it is the intention of the Convention that this shall be an emergency measure only and that the Legislature shall have power to determine the emergency?

The PRESIDENT: The Chair does not think the matter will be in order at the present time.

Mr. SHANAHAN of Somerville: I am somewhat confused. I desire to vote right on the final question and I would move reconsideration if I am right. I should like to state what my confusion is if it is in order at the present time: Under the amendment as already accepted does

not the effect of that make the final arbitrary power in the matter boards of aldermen and selectmen of our cities and towns in this sense, as far as cities and towns are concerned? The resolution or article of amendment as submitted by the committee, after action by the Legislature, makes it mandatory upon the Commonwealth as such, or upon cities and towns, to do the things provided for in the amendment. Under the amendment offered by the gentleman from Worcester (Mr. Dresser), if the Legislature determines an emergency to exist or a public exigency to exist, it is then not mandatory upon the part of cities and towns to do the things provided by the amendment or contemplated by this Convention; and I should like to know whether or not I am right in my interpretation of the effect of the amendment.

The Convention voted to submit the article of amendment to the people.

The amendment was ratified and adopted by the people Tuesday, November 6, 1917, by a vote of 261,119 to 51,826.

Mr. BALCH of Boston: I rise to ask if the resolution which I stated I wished to offer be now in order?

The PRESIDENT: Will the member state his question?

Mr. BALCH: I should like to offer a resolution that it is the sense of the Convention that the measure we have just passed was an emergency measure and that the Legislature has power to determine the emergency.

The PRESIDENT: The Chair sees no parliamentary objection to offering such a resolution.

Mr. BALCH: In that case I should like to offer such a resolution, Mr. President, and I will point this out: For the sake of aiding the courts hereafter in case of litigation which is sure to arise under the vague wording we have just adopted, such a resolution will be of the greatest value.

Mr. O'CONNELL of Boston: Is not that the same motion that was defeated in the form of an amendment to-day, almost word for word? Is it in order at this time?

The PRESIDENT: The Chair does not understand this is offered as an amendment, but merely as an expression of the sentiment of the Convention.

Mr. CREAMER of Lynn: As I understand it, the delegate from Boston wishes to offer a resolution which would announce to all concerned that this measure which we have just passed is only an emergency measure. I should like to ask him if he means by that that it is the sense of this Convention that these powers should be used only in abnormal times and not used in normal times to prevent private extortion? If that is the intent of the delegate from Boston I am satisfied it is not the intent of this Convention, because I believe that there may be comparatively normal times when it will be necessary that the General Court should have power to prevent private extortion.

Mr. BALCH of Boston: The gentleman from Lynn states precisely the attitude that I supposed would be taken by those who had certain words inserted in the resolution as it now stands, and I for one have believed and do now believe that it was the intention of the Convention to do precisely what he thinks it was not its intention to do. My understanding is that it was the intention of the Convention to say

that we should adopt State socialism for *emergency* uses, meaning in *ab*normal times.

Mr. HARRIMAN of New Bedford: I should like to ask the gentleman who has just taken his seat if the attitude which he takes now was not the same attitude which he took when he submitted his amendments and they were defeated by this Convention, and in their defeat was not the answer to his question made by the Convention at that time?

Mr. LOMASNEY of Boston: I am opposed to the resolution passing at this time. There are many members absent and, as there was a change made in the amendment at the suggestion of the member from Worcester in this division with the consent of the gentleman from Boston (Mr. Driscoll) representing on this floor organized labor, it seems to me that to come in now, after permission to amend has been given, and bring in a resolution declaring what is the sense of this Convention, with such a small attendance, is wrong. Let us pass the resolution as we have amended it if we want to; let the gentleman refrain from pressing his resolution until we have a full membership present the first of the week. It seems to me that it is unfair to pass such a resolution now, because we have not seen it in print, nobody knows how it will be construed, and I think the gentleman in decency should withdraw it. Personally I believe it is one of those resolutions that ought not to be put through if a single delegate objects to it. I move that the matter lie on the table; then, Mr. President, we can proceed and do the other business and come in next week and discuss it.

The motion to lay on the table prevailed.

The resolution was taken from the table Wednesday, November 14, 1917, and was withdrawn.

XIII.

THE POLICE POWER.

Mr. Brooks Adams of Quincy presented the following resolution (No. 3):

Resolved, That the bearing of the decisions of the Supreme Judicial Court of Massachusetts upon the constitutional doctrine of the so-called police power, be referred to the Judiciary Committee to consider the same, and thereafter to report to this Convention on the applicability of these decisions to such an administrative system as is likely to be necessitated by the stress of modern warfare.

The committee on the Executive reported the resolution back to the Convention without recommendation, and that report was accepted by the Convention Friday, June 14, 1918.

At the session of Tuesday, June 25, Mr. Harriman of New Bedford asked unanimous consent that he might move that the report be restored to its place on the calendar.

THE DEBATE.

Mr. HARRIMAN of New Bedford: I respectfully ask that No. 119 be restored to its place in the calendar.

The PRESIDENT: Mr. Harriman of New Bedford asks unanimous consent that the report of the committee upon No. 119 may be restored to its place in the calendar. Is there any objection?

Mr. PILLSBURY of Wellesley: It seems to me that there should be some explanation made of this request.

Mr. HARRIMAN: No. 119 is a resolution relative to extending the application of the decisions of the Supreme Judicial Court as to the police power, so called. This was a resolution which was reported by the committee on the Executive, and the committee had no recommendation to make. I myself, and I think Mr. Adams, wished to discuss it. The matter was gone over and the report has been accepted by this Convention, but the matter still appeared on the calendar. I, for one, was waiting for its turn, and one morning it disappeared from the calendar. The explanation given was that the report had been accepted by the Convention. For that reason I have made the request.

Mr. PILLSBURY: As at present advised I must object. I do not think the explanation is adequate. Neither the subject nor the character of the proposed resolution is disclosed and I have no idea what it is.

The PRESIDENT: Objection is raised. The motion cannot be entertained.

On the following day, Wednesday, June 26, Mr. Brooks Adams of Quincy made the same request.

Mr. ADAMS of Quincy: On the first day of the session, by a curious mistake, Resolution No. 119 was dropped from the calendar. The error occurred because of a misunderstanding between the chairman of the committee on the Executive and myself. He understood, — or

at least the committee understood, as I understand now, — that they thought that I ought to be responsible for the care of that particular resolution. I did not understand that any such thing was incumbent on me, and the result was that I happened to be a few minutes late that day for the calling of the calendar, and when I got in the mischief was done. Mr. Harriman moved yesterday that the resolution should be restored to its place on the calendar, but there was an objection by my friend Mr. Pillsbury. Mr. Pillsbury has signified to me that he has no objection, and therefore I renew the motion.

Objection was made by Mr. Horgan of Boston.

Mr. Sawyer offered the same resolution and moved a suspension of the rule in order that it might be admitted. The matter was referred to the committee on Rules and Procedure. That committee reported Friday, June 28, recommending that the rule be suspended.

Mr. Creed of Boston: I should like to ask if that is being done because the circumstances justify it, or as a courtesy to one or more members of this Convention.

Mr. Quincy of Boston: Perhaps it ought to be stated, in justice to the member from Quincy (Mr. Adams), who originated the present order and had it referred to the committee on Rules, that this merely reinstates before the Convention a subject which, properly or otherwise, was before the committee on the Executive at the beginning of the last session. That committee reported the measure without recommendation, and it so stood on the calendar. The gentleman from Quincy assumed that the chairman of the committee on the Executive would see that the matter was passed over when the calendar was called, so that it would continue before this body for discussion. The chairman of the committee on the Executive assumed that the gentleman from Quincy would look after the matter, as he had originated it. Owing to that misunderstanding, the matter, which was printed in the calendar once, lost its place; and all this order will do in effect will be to reinstate the subject-matter which was originated by the gentleman from Quincy (Mr. Adams).

Mr. Horgan of Boston: I desire to ask the member of the committee on Rules who has just taken his seat (Mr. Quincy) if this is not the same subject-matter which was in the calendar the week before this, on which request was twice made for unanimous consent in order that the matter might be restored to the calendar, and if there is any other reason than that of courtesy to a member why, ample opportunity having been afforded the members to discuss the matter when reached in the calendar, this matter should be presented now under a suspension of the rules.

Mr. Luce of Waltham: When this matter was reached on the calendar a gentleman in this division called "Pass." Apparently he was not heard, but he supposed that he was heard and that the matter had been passed, and I also supposed the matter had been passed So there have been two or three misapprehensions in regard to the situation. Under these circumstances it would seem as if it was not an unreasonable thing to correct what was in fact a misunderstanding or an inadvertence, and to allow the matter to take its place where some of us supposed it was.

Mr. Underhill of Somerville: As I appear as a dissenter to the report of the committee on Rules, the Convention may be interested in my reasons. Previous to this matter being removed from the calendar the gentleman from Newburyport, Mr. Bartlett, who was unable through delay in his train service to reach the Convention on time, had asked the Convention to restore to the calendar a matter which had been passed, and the Convention almost unanimously refused that request, showing thereby a determination on the part of the Convention that every man should attend to his own particular pet and that no excuses should prevail for postponement for reconsideration, or any delay in the Convention business.

Following out what I believe to be the desire and the will of the Convention, I opposed in the committee on Rules any courtesy to any other member, in spite of the fact that I have as much veneration for his gray hairs and his ancestry as anybody in the Convention. And so, sir, I opposed the proposition in the committee on Rules, and I oppose it on the floor of the Convention.

Mr. Washburn of Middleborough: I understand the status of the matter to be something like this: It was reported originally without recommendation, as the gentleman says, by the committee on the Executive, and the question was: "Shall the report be accepted?" It was accepted. It was the assumption of the gentleman from Quincy (Mr. Adams), I think, and a good many other members of this Convention, that this action advanced the matter to its second reading. But the subject of the committee's report was not an amendment, it was a resolution; and it was the opinion, I believe, of those in charge of the calendar of the Convention that the acceptance of the report technically had the effect of a final disposition of the matter. Now, clearly there has been some misapprehension, and because of this situation, I, for one, shall vote to sustain the pending committee recommendation, in order that those who want to be heard on this very important subject may have an opportunity.

Mr. Sawyer of Ware: This is a rather vexed question for us to take up offhand, and we have another matter on which the previous question has been ordered. It seems to me the wisest thing for us to do is to let it go over to the next session, and let us think it over, and then we shall come prepared. I move that the report of the committee be laid over until the next session.

Mr. Luce of Waltham: No reason convinces me that we should postpone consideration of this matter. It is a very simple proposition. Here, through no neglect of any member, through no absence, but purely through a misapprehension, the gentleman from Quincy (Mr. Adams) who desires to lay before this Convention considerations of a most important nature, on a most important proposition, was precluded from that opportunity. There was further misapprehension through the failure of another member of the Convention to secure a "Pass" on the measure when he called it. If there had been neglect, if there had been the circumstances of some other cases that have been advanced, I should not take my present view of this matter.

Mr. Cox of Boston: I understood the member in the first division (Mr. Luce) to say that there had been no neglect and no absence. I wish to ask him if the member who is interested to have this restored

did not state on the floor of the Convention that he was absent when the matter came up, and when he thought that it would be passed in his absence. I understood that statement to be upon the floor of this Convention when the member asked unanimous consent to have it restored.

The motion to postpone was negatived, and the Convention refused to suspend the rule in order that the resolution might be readmitted.

Authority of the General Court.

The committee on The General Court having recommended that a resolution (No. 82) presented by Mr. Samuel W. George of Haverhill ought NOT to be adopted, the resolution was considered Wednesday, July 10, 1918, and Mr. Brooks Adams of Quincy moved that it be amended by striking out lines 3 to 251, inclusive, and inserting in place thereof the following:

Power and authority are hereby given and granted to the said General Court, from time to time, to make, ordain and establish, all manner of wholesome and reasonable orders, laws, statutes and ordinances, directions and instructions, including the determination of the scope of the police power, either with penalties or without, so as the same be not repugnant or contrary to this Constitution, as they shall judge to be for the good and welfare of this Commonwealth, and for the government and ordering thereof, and of the subjects of the same, and for the necessary support and defence of the government thereof.

The debate, with the exception of the remarks of the last speaker, was addressed wholly to this proposed substitute.

THE DEBATE.

Mr. ADAMS of Quincy: Mr. Harriman has entered a notice of a motion to amend. I believe Mr. Harriman is not in the Convention. In his absence I should like to make the motion myself, if it is in order.

I am extremely reluctant to address the Convention on this resolution, because the resolution is Mr. Harriman's. However, in his absence I will venture to speak, as I feel much interest in the subject. May I ask if the Clerk will read the resolution.

The amendment, cited at the beginning of the chapter, was read.

Mr. ADAMS: I do not wish to waste the time of the Convention upon debating a proposition on which I conceive that the Convention has strong opinions already; but as I believe also that this is perhaps the most important question which is to come before this Convention, it appears to me to be a matter of duty on my part as well as I can to bring it to the attention of the members.

The substance of the amendment to the resolution is this: That it transfers from the courts to the Legislature the function of defining the police power, the scope of the police power. The resolution is substantially in the words of Mr. Justice Bradley in the case of St. Paul Railroad *v.* Minnesota. The question is: Are the courts or the Legislature the proper persons or the proper authority to define the scope of the police power? The other day this question came up pretty much in this form, only it was relative to the tenure of the judiciary, and my friend in the first division, the former Attorney-General (Mr.

Pillsbury of Wellesley), for whose opinion both in law and in matters of legislation I have the greatest respect, did me the honor of suggesting not only that I did not know what I was talking about, — to which suggestion I am perfectly willing to agree that it is true, — but also went on to argue that I was in bad faith toward this Convention when I said that the courts had constituted themselves a third branch of the Legislature for the purpose of legislation.

Mr. PILLSBURY of Wellesley: No, no, I did not charge you with bad faith, — no such thing.

Mr. ADAMS: The honorable member suggests that he did not make any such insinuation. I dare say, — I am bound to take his word that he did not, but it sounded very much that way. I wish to say also that I am not in the least sensitive in the matter. I should very much regret if the majority of this Convention thought that I had intended to delude them on such a question, but I should be much more sorry if I thought that they thought it was possible that I should succeed in such an attempt. But when it comes to the honorable gentleman's impugning my law, I confess that I am much more sensitive. He intimated that my assertion that the courts had made themselves a third Legislature body was not good law. Now I wish to submit to you that I suppose for six or eight hundred years, at least, that has been the common acceptation of the law. Our entire system is based on English precedents, and the English precedents since, — I do not know; since parliamentary government grew up at first, I suppose somewhere in the Fourteenth Century, — were to the effect that King, Lords and Commons constituted Parliament. And I understand that since that time it always has been accepted that where there were various bodies constituting a legislative assembly, one body of which had a negative on legislation, anybody who succeeded in getting a negative on legislation constituted a part of the Legislature. That I always have understood to be the constitutional law of England. I believe that we inherited it and I fancy it still is constitutional law with us. But that is not where, — and this is what I want to dwell on, what I want to point out, — that is not where this system arises particularly. The courts not only hold the negative on legislation, which is a very important function, but they hold something beside which the negative, the mere negative when legislation is passed, sinks into absolute insignificance. That is to say, they hold the power of repealing the statutes of this country at any distance of time, which is a power only similar to the old dispensing power which was claimed by the Crown in England in the Seventeenth Century. That is to say, our courts can hold a statute unlawful, that is, null, — they can absolutely annul legislation, which has been accepted as lawful for a generation or for a century. That is something which our courts themselves admit. I only refer you to the dissenting opinion of the present Chief Justice, Chief Justice White, in Pollock *v.* Marine Insurance Company, a very able opinion, in which he declares that one of his main reasons for dissenting from the opinion of the majority was that it overturned a power which he believed was inherent in government, which had lasted and had been exercised since the beginning of this government; that is to say, the power of levying an income tax. That power of annulment is substantially incompatible with administration, — with effective administration. I wish to point out and to force on this Conven-

tion that the one principle which has saved our country, which has saved our government, the one principle which has been of vital importance, is that the moment an exigency arises, we throw the courts overboard. That is the fact, and always has been so, the moment pressure has been put upon the country. It was so in the civil war. The so-called police power was invented in order to get rid of the courts. In other words, in order to carry on any very great — any very great — what shall I say? — war, for instance, any matter of very pressing moment, we have to establish what is tantamount to a dictatorship, — exactly as the Romans did. That is what it amounts to. All our court decisions, all the laws that we are passing now, so far as the courts are concerned, are null and void and can be rejected a hundred years from now if the courts see fit. That is perfectly plain to any of you gentlemen who will take the trouble to read the decisions of the courts themselves. That is so in the case *In re* Milligan, in which they held that under the war power it was unconstitutional for the Congress of the United States to transcend their ordinary functions except in case of rebellion or invasion. Those were the two excuses by which such legislation as the Congress was undertaking or now is undertaking, at the date of *In re* Milligan, to carry on could or can be justified. None of the legislation which, as I understand it, has been passed under Mr. Wilson and which is legislation which I conceive all of you gentlemen, as I do myself, consider to be necessary to the salvation of this country, — there is not one single statute among them but transcends in every line the recognized limits of constitutional government because of the war power; but the war power, according to the decision of the United States Courts in *In re* Milligan, does not exist at this moment, because there is neither rebellion nor invasion in this whole land.

I submit to this Convention that we have been debating here for the larger part of the session upon questions relating to the police power. But questions relating to the police power are not legal; they are political questions almost without exception. You go back to the beginning of our government and trace our police power in our National Congress, and it is easier to trace it there because it is more noticeable than in State Legislatures. It began with the decision of Chief Justice Marshall in the Dartmouth College case. The Dartmouth College case, of course, as you all know, was a case which is practically monstrous. It enables one Legislature to bind forever its successors to anybody to whom it pleases to make a grant; that is to say, if that grant happens to be in such a form as the Supreme Court then held to be a contract, and this particular contract chanced to be a charter of incorporation.

Now laying aside the legal theory of the case, which I do not think justifies in any event the interpretation of Chief Justice Marshall as to the matter of law, we come to the way in which that decision was put through. I beg that you and the gentlemen in this Convention who are interested in this great, this all-important question, will take the trouble to read Henry Cabot Lodge's Life of Daniel Webster, and you will find there the arguments by which the decision in the Dartmouth College case was put through and how the court was brought to concur in it. It was not put through as a matter of law; it was

put through as a matter of politics. Henry Cabot Lodge is a man whom I know very well, I have great respect for his knowledge of history and I have great respect for his knowledge of politics, and Henry Cabot Lodge would be the last man, the last man living, to undertake to impeach the credit of John Marshall. I for my part have the very greatest respect for John Marshall, but there was one weakness in Marshall's character: he did unreasonably hate Thomas Jefferson. [Laughter.] That is not matter of law. That Marshall should have hated Thomas Jefferson is not a legal issue; that is a political issue. Marshall hated Jefferson because Marshall hated the politics Jefferson professed, and he did his very best always to upset Jefferson and all his work. And that is not law. I cannot too strongly impress upon you that that is not a legal issue and that that is not an issue which can be argued properly before the courts. That the Chief Justice of the United States should hate the President of the United States is not a matter to properly come before the Supreme Court of the United States for judicial decision. But that was, as Henry Cabot Lodge has proved conclusively, the issue on which the Dartmouth College case turned, and it did not turn on any other. For months after that case was argued the entire strength of the old Federalist Party was turned to backing up Marshall for the purpose of bringing over to his side two judges who constituted, when they were brought over, the majority of the court.

Now, gentlemen, that is not the way in which a country safely or properly regulates its judicial matters. Wherever you turn in our history, from the Dartmouth College case until now, that same question has arisen in the question of our constitutional law. Take, for instance, the next great decision that came about. I take it that the next great decision was the Dred Scott decision. You know what the Dred Scott decision was. The Supreme Court of the United States, a whole generation after the fact, undertook to set aside the Missouri Compromise, which was a statute passed by Congress in the most solemn manner in the world, with the idea that by so doing they should save the country from a civil war. The legality of that statute was brought up on a collusive action before the Supreme Court of the United States for a judicial decision. I need not tell you, gentlemen, I need not tell you, Mr. President, that the issue which was argued before the Supreme Court was no more matter of law in the Dred Scott case than was the hatred of Chief Justice Marshall for the President of the United States in the Dartmouth College case. It was debated before the Supreme Court as a political issue, as purely a political issue, and it was decided as a political issue by judges who were put on the bench because they were politicians. That is the reason, and everybody who sits here and has read the history of the time knows that I am not exaggerating. That was the way the thing was done, and the effect was to precipitate the civil war. That is the effect of introducing this sort of political controversy into the law, — into our constitutional system. And you see it now. Every day these questions come up, these burning questions, — questions of labor, social questions, which have nothing whatever to do with the law. They are questions as to whether or not you shall have a minimum rate of wages, questions of that kind which are social questions, social issues.

They are brought up before the courts for adjudication, and the same passions permeate the courts and permeate the judiciary and permeate the law as permeate the community at large.

You cannot get away from that great fact. It is impossible. And we are the only country that tolerates that system. We are the only country which permits our judiciary to mix themselves up with politics, which is the ruin of the judiciary. It makes them at once a political issue. And that is why we have in so many States an elective judiciary, which I believe, if I may be excused for using such language, I believe to be a damnable principle. The judiciary, I believe, ought to be appointed; they ought to be appointed, and they ought to be appointed for a fixed tenure. But the moment that you give them power to debate and decide political questions, that moment they become political candidates, and it follows as a logical necessity that they must be elected if you have a republic. They will be elected whether or no. The people must and will insist on mingling themselves with such political appointments. They have done so in every country where the experiment has been tried, and it always must be so. It is impossible that it should be otherwise. As long as the people are the country and claim that they are the fountain of power, so long must they be in substance the power which appoints; and if they do not themselves actually appoint, the appointments must be made by men whom they choose to make appointments, and the men whom they choose to make appointments will appoint politicians who represent their opinions, exactly as John Adams appointed John Marshall, because he represented John Adams' opinions and because he hated Jefferson. That is the truth, — that is the truth. John Marshall was one of the greatest lawyers, I believe, who ever lived, and he was one of the most successful Chief Justices who ever sat on the bench of the United States. Perhaps I may go further and say he was the most successful. But why? Because he supported the power of Congress to pass statutes. He supported the tendency toward consolidation of this country and he entirely disapproved and tried to break down and did break down Thomas Jefferson, who denied that the country was consolidated or was anything but a, — what shall I say, — a league of States, that was all. Well, we fought the civil war on that issue: Is the United States a league of States, or is it a consolidated country? It hinges on this great question which we are considering to-day. If it is a league of States, that is exactly what the Constitution as construed by the courts means it should not be. The Constitution was made for the purpose of creating a league of States under that system of Thomas Jefferson. That was the doctrine of the Kentucky resolutions and that was the doctrine which Chief Justice Marshall always combated, and that is the doctrine which all of the Federalist Party combated, and it is the doctrine, as I understand it, which we are combating now. This government is not a league of States. This country is going on a regular predestined path which has led it and is leading it, *is leading it to-day*, from the wretched condition which it was in when it was a confederation of Colonies, absolutely powerless, with its Congress absolutely futile as a legislative body, to be a consolidated country such as we can protect, such as we can defend in case of necessity, because we can set aside that accursed doctrine of constitutional government which calls

this country a league of States. That is the only reason why we to-day can fight, let us say, the whole of Europe, because we have a single executive and because in case of necessity we have not got to stop while a lot of judges meddle with a great political question and finally say: "You can't do it." That is what I have seen a thousand times pointed out in the English papers. They say: "Why haven't we got a government like the United States, where power is vested in a single individual and not in a committee of the House of Commons? We have a government which is vested in a committee of the House of Commons, and that is our curse and that is why we have had the disasters of this war. It is because the powers of this country are not concentrated in a single mind. It is because there are continual quarrels in our cabinet, as we call it," — that is, in that committee of the House of Commons which is trying to fight this war. And with us, if you let loose the judges on these questions, we should have a system which would be the English system confounded. Just imagine submitting these questions to a bench of judges, as to whether or not we will have the President do what he is doing every day about us! We never would come to a conclusion. It would be a matter which would be debated for months and finally be denied

And it is so in our States. If you ever are going to have a government which will be administratively strong, if you ever are going to have a government in Massachusetts which will be worthy of the name, you must have a government which will have a policy and can go on and will not always be obstructed by a debating club. That is the very substance of the whole matter in hand. We have got to have a government which can administer as cheaply, as directly and as effectively as the other governments of the world; and if we cannot have that, we have got to take a back seat. We have got to give it up, because all modern government means administration, and that is all it does mean. And that is the question on which this subject we have to-day before us hinges. Its importance cannot be overestimated. It cannot be even measured. You must have authority somewhere. It is folly to say you cannot trust it; it is absurd to say you cannot trust it. You must trust it. You have got to trust it. If you are going to have a government in your democracy you must believe in your democracy. You cannot do otherwise. You cannot do otherwise, because you cannot deny the ability of your democracy or the powers of your democracy without overthrowing your democracy. That is the substance of all this war and that is the substance of all the questions which have arisen before us, which are of any importance, since we began our sittings a year ago. And I beg of you, — I beg of you to consider it seriously. You have got to face these questions sooner or later; sooner or later you have got to come to it, — by disaster if in no other way. Our people have got to learn by experience that if they are going to have a democracy they must believe in their democracy, and must trust it, and give it power and must do so with no unwilling hand. You have got to have centralized power somewhere or you cannot compete. You have got to have a government which can administer these questions for you, which can administer the questions which now are pressing upon us, by evolving its conception within a single mind; and it is only in such a way that these questions can be solved. It is only in such a way that the questions on

which the whole world is struggling ever can be solved. One nation or the other, one community or the other, must be able to solve these questions of competition more cheaply than the others simply because they administer them better. You have got to bring your coal from over the desert to New England. You have got to bring it here or you have got to give up manufacturing, and you have got to have an administrative system which will bring it here and is competent to bring it here. You have got to have your farming, and you have got to have your farming done in the way in which it can be done most cheaply; and if it can be done most cheaply by the community, then it has got to be done by the community. This is not any laughing matter; it is not anything to be put off or thrust to one side because we say we like our old system better, because we say we always have been accustomed to another way of thinking. But that will not go down any longer. The supreme arbitrament of these questions is war. Before a man can have a government that he loves he has got to live. He can live only by having a government that is effective.

We may debate this, we may shrink from it, we may run away from it forever, but we are brought up to it by the supreme arbitrament of war, and from that we cannot flinch. Now, I believe, it is to be involved in this very issue and brought up by this very resolution which I am trying to expound now, and no more important question can be brought before you for consideration. It cannot be put down. It is our irrepressible conflict. I beg to thank you for your patience, but that is all I have to say. [Applause.]

Mr. Pillsbury of Wellesley: I am liable to be imperatively called away in a moment, and as I cannot allow what has been said by my friend from Quincy to pass without notice, I must avail myself of the opportunity at this time. And first let me assure him, — though it ought not to be necessary, — that I have never charged him with not knowing what he is talking about. So far as his theories rest in historical information and a wide and profound range of historical study, as very largely they do, I hope it will not be taken as invidious if I say that I think he probably knows what he is talking about better than any other member of this Convention, — at any rate vastly better than myself. Neither have I ever charged him with misstating the law. I did say the other day, and I regret being obliged to repeat, that I think he misstates the position and attitude of the judiciary in our government and the effect of the necessary discharge of the judicial duty. That is because we take different views of that political question, and mine may be wrong. As to the idea that I charged him with bad faith, no man who ever knew me knows better than my friend from Quincy that I should never lightly charge that against any man, and he cannot believe that I ever dreamed of making any such imputation against him. The substance of the whole matter is that my friend entertains political theories original and picturesque always, as he has set them out in literature, but to my mind radically unsound. That may be the worse for him or the worse for me, no matter which. I said the other day, and I repeat it only that my view of his view may be entirely clear, — that I think he is entirely wrong in saying that the judiciary has assumed or exercised the power to repeal statutes. To my mind that is not an accurate but a misleading statement. It is a theory which my friend has done much to promulgate

by the power of his brilliant pen, and I fear that in the process he has done an infinite amount of political mischief, if he will pardon me for saying so.

Mr. ADAMS: Certainly; you flatter me.

Mr. PILLSBURY: The Constitution imposes certain restraints upon the power of the government, the power of individuals, the power of the people themselves, and differences of opinion are bound to arise as to the meaning and effect of the constitutional restraints, and the Constitution must be construed by somebody. That is a judicial duty, which devolves necessarily upon the courts, and nobody has ever suggested or proposed that it ought to be anywhere else.

Mr. ADAMS: I hate to interrupt my friend, but as I understand it, that was the exact issue between Thomas Jefferson and Marshall, and that was why Marshall hated Jefferson so badly. [Laughter.] It was the Kentucky resolution which, if I remember right, brought matters to a crisis between them. Jefferson's theory was that it was the States themselves which by their conventions should declare legislation unconstitutional if they thought it was unconstitutional.

Mr. PILLSBURY: I cannot be diverted into a historical discussion because I cannot take time for it. I will except Jefferson and Jackson. What I was about to say was that, it being the necessary and unavoidable duty of the courts to construe the Constitution and the laws, questions occasionally come before them of a quasi-political character, questions sometimes having a far-reaching influence upon the political policy and the destiny of the government and the country. They are not arbiters at large of constitutional questions. There is no power anywhere under our government to go to the Supreme Court to tell us what a particular clause means. They can deal with such questions only as they come before them in suits between parties, and they can go no farther than the case requires, and with the single exception of the Dred Scott case, to which my friend has referred, so far as I know they have never attempted to go farther, — in any case of great importance, — than a determination of the rights of the parties as they are in the case before the court.

Mr. BROWN of Brockton: I should like to ask the gentleman: Is there ever a case between private parties that does not involve some fundamental principle upon which the court bases its decision?

Mr. PILLSBURY: Perhaps not; but it is only in an insignificant minority of cases that the question between the parties has such a political bearing as to make it of any great political consequence. The number of those cases is very small, but such a question is there occasionally and the court has to deal with it.

Now, the court must determine the questions which arise in cases according to its views of the proper construction of the Constitution. It is an unavoidable duty, from which it cannot shrink, — could not if it would; and in the process, which is a very difficult and complicated process, there is bound to result a certain amount of what is popularly called "judge-made law." But when the court finds a statute in conflict with a constitutional provision, the court is bound to say so and to give effect to the Constitution as the paramount law of the land, and everybody who is dissatisfied with the decision feels more or less dissatisfied with the judges who made it. And so all the complaints against the judiciary, against its usurpation of power, the

charge that it has arrogated to itself the power to repeal statutes, and all that sort of thing, has grown from time to time out of the dissatisfaction of people with the decisions of the court, which nobody pretends to deny are honestly made, however imperfect. It is a defect inseparable from the system. It is due to the infirmity of the human mind and the imperfection of human institutions; and the most wonderful thing perhaps in connection with our government, with constitutional government in the Nation and the States, is that the system has been carried on for so many generations with so little ground for complaint. The unfortunate thing is that the complaints are fomented and made too much of, and are made the occasion of popular clamor against the judiciary, which is unjust to the judges, and, what is of much more consequence, is dangerous to the government itself.

The question presented by this resolution, while one of the most delicate questions in constitutional law, is one of the most interesting. I should like to lecture the Convention upon it, but if I began I have no idea where I should stop, for there is a great deal that might be said about it. But the whole significance of the issue before the Convention can be put in a single word, and for that purpose I invite gentlemen to look at the resolution proposed by the gentleman from New Bedford (Mr. Harriman) and moved by my friend from Quincy (Mr. Adams), on page 3 of the calendar.

He proposes to write into what we call the "welfare clause" of the Constitution these words: "Including the determination of the scope of the police power." This is all there is to it. This is the only change; all the rest is repetition.

He proposes to authorize the Legislature to determine the scope of the police power. What is the police power? My friend from Quincy said it was "invented" at some time or other, for some purpose or other. The police power was never invented except as government was invented. It is an inherent power of all governments, of whatever character, wheresoever and whensoever existing; and it is the general power of regulating the affairs of the government and the people, a power so broad as to be almost without limitation, a power the unchecked exercise of which is absolutely inconsistent with liberty, and which therefore must be and is restrained in a free government. For that very purpose the constitutional restraints have been imposed; and they say to the Legislature, having this vast power to deal with life, liberty and property, involving all that concerns the interests and the welfare of the people: "In certain directions you shall not go beyond this line; you shall not take or impair life, liberty or property without due process of law," which means without due inquiry and the judgment of a competent tribunal. Among all the constitutional restraints, this is the most important safeguard of what we call our liberties.

Now what is the meaning and effect of this clause which my friend proposes to write into the Constitution? It is, to be sure, qualified by the context of the clause into which it is written, but the meaning and effect are left doubtful. It is, to my mind, a long step toward abolition of the constitutional restraints. Write that clause into the Constitution unchecked, and you would have put into the hands of the Legislature, a popular body, always under popular control and

more or less under the controlling influence of popular prejudice and popular clamor, the power to deal according to the impulses and caprices of the moment with the life, liberty and property of the citizen, — and that proposition would be, to my mind, so offensive that I would not take time to discuss it. [Applause.]

Mr. Adams of Quincy: My learned friend has made certain remarks about its being an insult to discuss these matters, but I should like to ask him whether the Supreme Court has not repeatedly, and its ablest judges very emphatically, taken the position that it was a legislative and not a judicial function, exactly as has been defined in the amendment to this resolution; whether that resolution, for instance, was not practically or absolutely the ground taken in the decision in Munn *v.* Illinois, and is not practically in the very words of Mr. Justice Bradley in the case of St. Paul *v.* Minnesota; and whether Mr. Justice Bradley was not, on the whole, the ablest and, on the whole, the most satisfactory judge whom we had on the Supreme Court in the last half of the last century?

Mr. Pillsbury: The question who is the greatest judge in the Supreme Court in the last half of the last century is not very important, and does not seem to me to have any material bearing on the present question. There is no question but what Judge Bradley was a very able judge; but to say he was greater than Miller or others would be going a long way, and I am not sure that I am prepared to follow my friend so far as that.

To answer my friend's question so far as it bears upon the present situation, and so far as I understood it, it is a perfectly familiar doctrine that it is for the legislative body, the Congress in the National government and the Legislatures in the States, to say how and when and how far the police power ought to be exercised for any purpose. The necessity or expediency of exercising the power is a legislative question, which belongs to the Legislature; and nothing is left to the court but to say whether the Legislature has gone so far as to invade the restraints of the Constitution. That is a judicial question, and when the court finds that to be the case it is bound to say so, and the result is that the law becomes inoperative to that extent. But the court has not "repealed the statute" or assumed or exercised any power to "repeal" statutes or to make law, and it is inaccurate and misleading to say so.

Mr. Anderson of Newton: May I humbly ask, as a layman in this matter, whether these words in the resolution, "so as the same be not repugnant or contrary to this Constitution," will not limit the determination of the scope of the police power given to the Legislature, and whether that limitation would not become a subject of judicial determination?

Mr. Pillsbury: Let me humbly answer, out of the depths of my ignorance, that I do not know whether or how far those words would be taken as limiting the very direct language which the gentleman proposes to introduce into that clause. I agree that my friend has ground for his question and that it is a reasonable question; and if I knew how the courts, — our own Supreme Judicial Court in the first place, and the Supreme Court of the United States finally, — would construe the conjunction of those two clauses, I might not have said what

I have said or I might have said something quite different. I do not know. I can see the possible danger and I am not sure that I see the safeguard.

Mr. Brown of Brockton: I wish this question had come up in the beginning of the session. We are making great progress in this Convention, because the most learned people among us are commencing to plead their ignorance, and it is said that the beginning of wisdom is just when a man begins to think he knows nothing.

I am glad that the gentleman from Wellesley (Mr. Pillsbury) has stated the question concisely. It is to transfer from the courts to the Legislature the determination of what is police power and what is its extent. Now, so far as labor might be heard on this question it would be divided, and for precisely the reason given by the gentleman from Wellesley — that it is the transferring of power, and that the power might be misused, because the Legislature would not be under popular clamor, as the gentleman claims, but would be under the clamor of wealth. That is why they would divide. I suppose I violate no confidence in saying they are divided. But might it not be true that if the court is composed of only a few people, while the Legislature is composed of many, that the question is safer in the hands of the many than in the hands of the few?

When we speak of politics let us understand that all action in the nature of government is politics. Politics is policy. Policy is a matter of keeping house together, — State or Nation. Government deals with it. The Legislature, under the government, deals with keeping house in the State. And for us to say that the lawyers were influenced or the judges were influenced or that other people are influenced by politics is nothing more than to say at the present time the Legislature is influenced. Unquestionably it is.

Let us recognize that we are under different conditions than when this government was founded. I almost thought the old Federalist doctrine was being preached here, and to a certain extent it was, by my friend Adams, and I well can imagine how very much up in arms Elbridge Gerry would have been against some of the ideas. So far as I am concerned personally, in anything I ever have said in this Convention, or any opinions I may hold, I stand with Abraham Lincoln, who said he never had a political opinion which he did not take from Thomas Jefferson, and unquestionably you can go to Jefferson as the expounder of the principles under which people should be virtuous and happy, — for that is the condition he sought.

Now, when the gentleman from Wellesley (Mr. Pillsbury) pronounced the dictum that he did I felt almost as if I was sentenced, not only to silence, but to imprisonment; because if it be as he says, why, of course it would be a dangerous power. But if it be as the gentleman from Newton (Mr. Anderson) says, who rose to ask a question of him, that the Constitution in its limitations is still superior, that if you granted to the Legislature the police power they could not take away from a man life and liberty any more than they can at the present time, why, then of course I reverse my opinion.

The gentleman from Quincy (Mr. Adams) has spoken about coming conditions. Let us not lose sight of that important consideration. Let us recognize that at the time this government was founded the people knew nothing of monopolistic corporations, they knew nothing

of aggregations of labor, and the consequent control by one man over the fortunes and destinies of many other men, such as we have to-day. The nearest criticism or recognition of anything of this nature which you can find was what Jefferson said when he looked at the Constitution and said he thought they had made a great mistake that they had not provided to restrict monopoly. Nearly all of the objectionable conditions that are prevalent may be traced directly to the opportunities for monopoly which have come into our economic system. Some of the original States did recognize possibilities and made provision against monopoly, declaring it to be dangerous and against the public policy. Now, the system having passed from the influence of competition to the control of monopoly, the natural laws of supply and demand are set one side; for it must be an axiom that whoever controls the supply may control its price. Therefore the employer of labor may control the price if he can control the supply. But if labor controls the supply then labor controls the price.

You are going to come up against this vital question of control unless you wish to see the whole structure back to the day of the individual employer, with only a few hands employed under him. The indications are that we shall continue on the theory that the largest efficiency is to be found in these aggregations of dollars on the one side, and the aggregations of men working under the aggregation of dollars, on the other side. This changes the relations of the individual to the State, as I see it. One of the most important pieces of news which could interest the Convention at the present moment is in the declaration found in this morning's papers that the trades-unionists of London have the question of getting together before or immediately after the war closes, representatives of the trades-unionists of the world to determine what is going to be their attitude on the great question of the relations of business and the employers of labor.

I again ask: Are we to leave this question to be legislated upon wholly by a part of the people on the outside, — two parts of the people? Because on the one side we have labor legislating by the unions, and we have property legislating on the other side by the representatives of organized capital. The two bodies are in conflict, and naturally will continue in conflict more or less direct or severe. The system of distribution inevitably transfers a portion of the products of labor to the distributors. I want to make clear, if I have not made clear, to this Convention, that I am not making and have no war upon capital; I have no criticism against any person who has wealth; but I object to using wealth to corrupt the electorate. I hold in abhorrence the preaching of classes. Whoever has got any wealth, let him keep it. I urge no inequitable redistribution. That is an injustice, and you never can commit an injustice in the State unless it reacts. But the whole theory of labor as organized, and of myself as an expounder of it, is this: That there is an annual wealth production; we are keeping house all together, and annually our production amounts to a certain sum. Out of that total sum must be taken overhead charges, — first, in the way of interest on bonds, dividends on stock and fixed charges of that nature; secondly, a sum sufficient to feed, clothe and house the producers. Then what is left is a surplus that is added as new wealth to the wealth already in existence. My contention is that in this annual production and distribution the laws

of distribution are so inequitable that wealth accumulates in a few hands, whereas, under a distribution that was naturally or morally honest, each man would have according to his needs, for there are some people who want very little in this world to be happy and having that little have no concern in what others have. Under such distribution each would have what naturally and honestly belongs to him; then there would be none of this clamor of want, there would be none of this crying out against wealth. The clamor, — using the word used by the gentleman from Wellesley, as I understand it, — the clamor is well founded; it is against the misuse of wealth after it has been obtained. It is the attempt, too often successful, to have wealth exert an undue pressure against honest merit. There is a growing belief that merit does not have the recognition it deserves because of the power of wealth. If that be true, then surely we are on the shifting sands. Now to give power to the Legislature, to determine the conditions of labor and the distribution of the products of labor, is it wise? I say again there is a difference of opinion in the trades-union movement. We find some who would rather fight it out on the outside. I ground myself in my faith in eternal justice; that if a proposition is deliberated upon in the Legislature, out of the minds of the many will come an honest solution of the problem. The Constitution declares that the whole government is built on the theory that every man has a right to the proceeds of his toil. It means that he should receive out of his toil a proper enjoyment of life and a surplus, that he may acquire property to which the declaration refers.

The contention is that your system of distribution is so arranged that an undue portion of labor's wealth is taken from labor without equivalent, and flows to the property side of the few, where wealth already is aggregated. Is it true or is it false? I state it as a proposition. Legislation should be for the greatest good of the greatest number. Now, if we are a representative government these differences should find expression and adjudication in laws made by the representatives of the people chosen for that purpose. Why, I grant my friend from Quincy (Mr. Adams) what he says about Marshall. But Marshall would not have been the man he was if he had not the individuality which is criticized. Our government has been built up by these strong individualities. They have Americanized our people. We are proud of such men. I am, even if they do not belong to my political party.

I am not in accord with those who fear that labor had better rest its case with its organization; that it is organized strong enough to control the Legislature now and to control elections. So far as the organization is acting for the uplift of humanity, for the common good, for the good of all, I am glad that they are in existence; but I am not afraid to say that in a well governed republic there should be no necessity for an organization of labor for such a purpose and there would be none if it was not forced into existence by the encroachments on the rights of labor. Aggregations of capital forced the aggregation of labor. Thus labor is justified.

Mr. ANDERSON of Newton: I should like to ask the gentleman from Brockton the same question that I asked the gentleman from Wellesley (Mr. Pillsbury). I want to know how he construes that clause.

Mr. BROWN: Even in the absence of those words there I should

hold that the police power, being an incident to government, would be controlled by the larger structure, which itself created the police power. That is the way that I would reason it.

Mr. ANDERSON: Would the gentleman say that that was subject to judicial construction?

Mr. BROWN: If I understand the gentleman, — would I say that the action of the Legislature in taking away a man's liberty would be subject to the limitations in the Constitution? Yes; sure. In all the natural rights, in all the fundamental principles, which in the Constitution are defined clearly, they dominate; and every power, to my mind, which has been exercised in violation of that principle finds its justification as incidental to the exercise of executive power. That is the centralization which the gentleman from Quincy (Mr. Adams) talks about.

We are discussing an important question, as the gentleman from Wellesley (Mr. Pillsbury) says, and it does go to the very root. He speaks about the courts. Why, delegate Sherman Whipple, if I remember correctly his lecture in Virginia, is an authority that the courts have done that which the gentleman from Wellesley says they have not.

We have certain principles laid down in the Bible, and then we have certain commentators, certain interpreters. But does any one say because a commentator or an interpreter says a certain thing that "Thus saith the Bible"? The Constitution says certain things. The people in the Legislature think that the Constitution warrants them in passing a certain law. Up to that time it is the honest expression of the representatives of the people, who knowingly would not violate their oath to support the Constitution. So they pass a law. Then a few men, — the judges, — say it is unconstitutional. This popular clamor against it that the gentleman from Wellesley talks about is an incident to any democratic government, — the right of the majority to rule.

Mr. ANDERSON: I wish to ask the gentleman from Brockton if the exercise of the police power by the Legislature, according to his reply to my first question, is subject to judicial construction, what good does this proposition do, from his point of view?

Mr. BROWN: I would answer the gentleman's question by saying that it limits the power of the courts to go so far as they now go in determining that certain legislative details are a violation of the Constitution. But it does not take away entirely from the court the power to determine that some very plain controlling principle had been violated, and possibly violated by an oversight. That is my differentiation that I would make.

Mr. WASHBURN of Middleborough: I feel a good deal of trepidation in permitting any poor, dull words of mine to be measured with the utterances of the distinguished gentlemen to whom we have listened this morning, but there are one or two assertions made by the gentleman from Quincy (Mr. Adams) which I, for one, cannot allow to pass unchallenged.

It has been asserted repeatedly on the floor of this Convention that the judicial power, as we construe it, is peculiar to American institutions, and that its exercise is an act of judicial usurpation, — sheer usurpation. The forefathers in establishing judicial competency did nothing revolutionary or unprecedented. The idea did not originate

with John Marshall, as we have been told here this morning. Judicial review was the natural outgrowth of beliefs that were common property at the time the different Constitutions were being framed.

It is quite true that in most modern States parliaments are supreme, but the reason for this is simple enough when you come to trace it historically. It was not always so. The time was when the courts were appealed to in order to protect the kingly prerogative against the encroachment of the Parliament, but as parliaments grew stronger the judicial power began to wane. It is true that after the Revolution in England in 1688, and after Louis went to the guillotine, no court in England or France would undertake to construe ordinary legislation. But even in England, as I understand it, the courts would intervene to-day to declare an act void which was impossible of performance or which was inconsistent with natural justice. I suppose an act depriving an Englishman of his right to trial by jury would be a case of that sort. Very broadly speaking, as I understand the fact, in civil law countries the courts may be said to be comparatively weak, whereas in common law countries they are comparatively strong. But it is a mistake to say that our fathers were not acquainted with the theory of legislative sovereignty. They were. That is just the thing they wanted to curb.

There is no case which shows this better, in my judgment, than the case of Bayard *v.* Singleton, — and it may be worth while to take just a moment to review it, — which arose in North Carolina shortly before the Federal Convention met in Philadelphia. This case, which may be found in Martin's Reports, was an action of ejectment to recover a lot of ground with a house and a wharf. The defendant held under a deed given by the State commissioner of confiscated estates. The plaintiffs claimed under the deed of one Cornell, the father of Mrs. Bayard, who lived and died an English subject. The contention was that Mrs. Bayard was deprived of her property without due process of law, and this contention was upheld by the North Carolina court. The leading counsel in the case was Iredell, who was afterwards Supreme Court Justice in Washington, and he wrote some very interesting letters about that time. I want to take a moment to read one or two extracts, because they throw a flood of light upon this question. Iredell wrote a letter, printed at Newbern on August 17, 1786, in which he said:

> We had not only been sickened and disgusted for years with the high and almost impious language of Great Britain, of the omnipotent power of the British Parliament, but had severely smarted under its effects. . . . Theories were nothing to us, opposed to our own severe experience. We were not ignorant of the theory of the necessity of the Legislature being absolute in all cases, because it was the great ground of the British pretensions. But this was a mere speculative principle, which men at ease and leisure thought proper to assume. When we were at liberty to form a government as we thought best, without regard to that or any theoretical principle we did not approve of, we decisively gave our sentiments against it, being willing to run all the risks of a government to be conducted on the principles then laid as the basis of it. . . . No people had ever before deliberately met for so great a purpose. Other governments have been established by chance, caprice, or mere brutal force. Ours, thank God, spring from the deliberate voice of the people. We provided, or meant to provide, — God grant our purpose may not be defeated, — for the security of every individual, as well as a fluctuating majority of the people. We know the value of liberty too well to suffer it to depend on the capricious voice of popular favor, easily led astray by designing men, and courted for insidious purposes.

And again, on August 26, 1787, he wrote Richard Dobbs Spaight, a delegate to the Philadelphia Convention:

> In a republican government, as I conceive, individual liberty is a matter of the utmost moment, as, if there be no check upon the public passions, it is in the greatest danger. The majority, having the rule in their own hands, may take care of themselves; but in what condition are the minority, if the power of the other is without limit? These considerations, I suppose, or similar ones, occasioned such express provisions for the personal liberty of each citizen, which the citizens, when they formed the Constitution, chose to reserve as an unalienated right, and not to leave at the mercy of any assembly whatever.

This case does not stand alone. Others could be cited. Just one further reference. The Continental Congress passed a resolution, after the treaty of peace with England, in which it implored the different States to enact a resolution declaring all statutes inconsistent with the treaty to be void and of no effect, and in an address Congress said:

> By repealing in general terms all acts and clauses repugnant to the treaty, the business will be turned over to its proper department, viz., the judicial; and the courts of law will find no difficulty in deciding whether any particular act or clause is or is not contrary to the treaty.

So I say it is absurd to argue that the idea of judicial competency was not thoroughly well understood at the time the Federal Constitution was being framed, and at the time the different State Constitutions also were being framed.

The gentleman from Quincy (Mr. Adams) said some few days ago that if "we are to be hampered by written restrictions made 150 years ago, then we must consent that we are ready to be wiped out." I deny that we are so hampered. We never have been. The fact that we have adopted as many amendments as we have since 1820 shows that our constitutional system is flexible. This Convention itself is a refutation of any such theory. If I understand the gentleman himself, he does not deny that a judicial tribunal is the best tribunal that can be devised by the wit of man to construe a written instrument if we are to have a written instrument. He said this morning that we have got to have a democracy. Very well. What kind of a democracy? A constitutional democracy, which means a written Constitution? If so, where lies the power which is to construe it?

In his book on "The Theory of Social Revolutions" the distinguished gentleman from Quincy (and I may refer to him as Brooks Adams, the author) says: (I quote from page 78.)

> In theory it may be true, as Hamilton contended, that given the fact that a written Constitution is inevitable, a bench of judges is the best tribunal to interpret its meaning, since the duty of the judge has ever been, and is now, to interpret the meaning of written instruments.

He says on another page that:

> A Legislature is nearly the antithesis of a court. It is designed to reflect the passions of the voters.

There you have the two opposing theories very fairly stated. Of course a Legislature is governed by expediency. On the other hand, as a constitutional writer of some note has said recently, a court is governed by logic, it is governed by precedent, by the sensible meaning of words and the perception of their moral consequences. If we

are to have a written Constitution, the superiority of a system of judicial review cannot be disputed. Those who would deny to the courts the power of review must in effect be contending for a system under which constitutional guarantees will be honored or dishonored according to the whim of the voting majority of the moment.

Mr. HART of Cambridge: A member of this Convention (Mr. Bennett) yesterday paid his compliments to persons who "let themselves loose." We all delight in that member. Our sessions would be arid indeed without Old Personal Privilege. But I believe in men who let themselves loose, men who have some personal feeling about what goes on in this Convention, and the questions before it.

I desire to say three things with regard to the immediate topic brought up by the motion of the gentleman from Quincy (Mr. Adams), which raises a question of the power of the judiciary as compared with that of the Legislature. Did time allow I should be happy to cross swords with the gentleman who has just spoken so eloquently with regard to the origin of this principle. There is this to be said, however: Undoubtedly the Federal Convention understood the principle of judicial review, because they intended it should be applied by the Federal courts to State legislation; but the Supreme Court of the United States never found out until 1857 that it had the power to set aside acts of Congress. I leave out of account the decision in the Marbury case of 1803 and the Fereira decision of 1853, for reasons which I have not here the time to state. If ever there was a political decision it was the Marbury decision, which by pretense set aside an act of Congress, but actually was intended to set aside action of the President of the United States, and as a rebuke to both the other departments, which had become Democratic, while the Supreme Court remained Federalist.

The main thing for which I wished to speak is simply to ask the question: By what right does a court in any of our States or in the Union assume to set aside the acts of coördinate departments? Of course the power of the courts is precisely the same with regard to acts of the executive which they may be called upon to traverse. Our courts are constantly overruling the decisions of executive authorities less than the Governor, and by mandamus compelling them to perform acts which they have failed to perform. Now, I ask again, what is the bottom principle of politics or government upon which the courts have the right to veto the legislative and the executive, while neither of those departments has any constitutional right to pass upon the judiciary? Where do you look for it? In the Constitution of Massachusetts there is no clause to that effect. In the Constitution of the United States there is no clause to that effect, except certain provisions which certainly intended that State legislation should be reviewed by Federal courts. No, the whole power is based upon custom and usage, accepted by the people of the United States. True, that is a mighty basis.

Mr. WILLIAM S. KINNEY of Boston: Along the line that the gentleman is arguing, will he kindly answer these two questions?

First, as to whether or not in the Federal Constitution there are not at least two clauses, — that the judicial power shall be vested in the Supreme Judicial Court, and that the judicial power shall extend

to questions arising under the Constitution and laws of the United States; and

Second, whether or not those two clauses taken together do not vest in the Supreme Judicial Court the power to make these decisions as to the constitutionality of statutes?

Mr. HART: There is no time to answer those questions adequately; and in order to relieve the pressure I will withdraw that statement with regard to this Commonwealth, though I do not admit that there is an express constitutional right given to the court in this State. In almost all the Commonwealths of the United States in their Constitutions there is no express constitutional right. The one point that I want to make is simply this, then: We have this power by custom, by usage. In this Commonwealth it is very deeply seated, and therefore I am not in favor of disturbing it. The constituency in Massachusetts are accustomed to the system. They have confidence in their courts. The only thing which this Convention seems at all inclined to modify with regard to the judiciary is the life tenure of the judges. Therefore I am not speaking with the view to bring about in the minds of my fellow-members a temper which would lead to a discontinuance of this procedure in Massachusetts. What I want to bring out clearly is exactly in the line of what has been said by the gentleman from Quincy (Mr. Adams) and the gentleman from Wellesley (Mr. Pillsbury), in their two eloquent speeches pendents of each other, — namely, the fact that we are confronted here by a usage and that a future usage may spring up which will undo it. It took a very long time for the people of Massachusetts to recognize fully the power of judicial review in their State. It took a much longer time for the Federal Supreme Court to arrive at that conclusion. The first clear case of significant legislation then in force which was set aside by that Court was the Legal Tender case of 1870, and the very next year the Supreme Court reversed itself upon that decision. The truth is that we are addicted to a system of self-confined government.

Mr. WILLIAM S. KINNEY: The debate on this subject has been very exhaustive and has covered the entire question. There are just two issues presented by this amendment, and those issues are of far-reaching effect. They involve, as has been stated, the transfer of the power to define the police powers of the Legislature from the Supreme Judicial Court to the Legislature itself. If we write into the Constitution that language, as has been stated by the gentleman from Wellesley (Mr. Pillsbury), we practically are nullifying the powers of the court; and as has been stated by the gentleman from Middleborough (Mr. Washburn), we start out on a course of action that ultimately will destroy the value of written Constitutions in this country. With those two great issues before us, issues which have been debated in the Federal Congress since the formation of the country, issues which played a prominent part in plunging the great Republic into the civil war, I do not believe that in this critical hour of affairs this Convention is going to recommend to the voters of Massachusetts an amendment with those far-reaching and perilous effects.

Mr. GLAZIER of Hudson: Before voting on this resolution I wish to have my mind cleared a little, and I trust that some of the lawyers in the Convention will give me the information, so that we may take

a vote understandingly. I find in this resolution as offered by the gentleman in the fourth division (Mr. George) that any enactment of the Legislature shall take effect at once. I recall that we already have voted also on a resolution which has become a proposed amendment to the Constitution, that any enactment of the Legislature shall not become effective for at least 90 days, and my question is: In voting for this am I conflicting with that proposed constitutional amendment which we already have voted upon? In other words, at the top of page 7 we find "shall not be repugnant or contrary to the Constitution", which is in our Constitution as at the present time, but by this vote, as I understand, we simply are reiterating that Constitution, and, this being a later vote, I want to know what the effect will be with the ruling of the Supreme Judicial Court or any other authority.

The amendment moved by Mr. Adams of Quincy was rejected.

The resolution (No. 82) was rejected, as had been recommended by the committee on The General Court.

Rights of the People.

Mr. E. Gerry Brown of Brockton presented the following resolution (No. 147):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The enumeration herein of certain rights shall not impair nor deny others retained by the people.

The committee on Bill of Rights reported that the resolution ought NOT to be adopted; and it was considered by the Committee of the Whole Tuesday, August 7, 1917, and was rejected by the Convention the next day.

THE DEBATE.

Mr. BROWN of Brockton: I should like to give an opportunity to the member in charge of this measure, or any other member of the committee on Bill of Rights, so that it may appear in the record, to say what was the reason for rejecting this; what would be the effect of it if it were there, or, in other words, what is the effect if it is not there.

I desire to say, sir, that I consider this matter somewhat important. It is my resolution; I know that there have been times when, if those words were in the Constitution, legal questions might not have been decided as they were decided. I know also until a provision of that nature was adopted by various States that they would not accept the Constitution of the United States. I know that at the time when we in Massachusetts were considering the very question of whether or not to adopt the Constitution of the United States, that was one of the provisions which was enumerated by the President of the Convention, Governor Bowdoin, as being the safeguard that the States had against the usurpation by the Congress of the United States. Furthermore, that Adams, whose support was very much needed, said that this safeguard was the one thing that enabled him to support it, and even at that the vote was very close under which that was passed. It provides

practically that the power that is not delegated by the people remains in the hands of the people and that any rights that may be enumerated do not impair other rights which they have not delegated. Therefore I wanted to have the committee state as to why it was rejected. But if the committee proposes to dispose of it, trusting to the fact that the majority of the Convention will stand with them, it seems to be safe in assuming such a position.

XIV.

ELECTION AND TENURE OF JUDICIAL OFFICERS.

Election of Judges.

Mr. James E. Maguire of Boston presented the following resolution (No. 197):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The judges of the Supreme Court, the Superior Court, and the Land Court shall be elected by the people of the Commonwealth; the judges of probate and insolvency, and of police, district, municipal and juvenile courts by the people of their several judicial districts at the annual State elections in the year one thousand nine hundred and eighteen for a term of six years.

If a vacancy occurs in the office of judge of any of the said courts the Governor shall appoint, by and with the consent of the Council, a person to fill such vacancy until the election and qualification of a judge to hold said office, which election shall take place at the next succeeding general election and the person so elected shall hold office for a full term of six years.

No person shall be eligible for the office of judge of the Supreme Court unless he shall be learned in the law, at least thirty-five years of age and a member of the bar for at least ten years.

No person shall be eligible for the office of judge of the Superior Court and of the Land Court unless he shall be learned in the law, at least thirty years of age and a member of the bar for at least five years.

No person shall be eligible for the office of judge of probate and insolvency, police, district and municipal and juvenile courts unless he shall have been a member of the bar for five years next preceding his election.

The names of all candidates for the office of judge of the several courts aforesaid shall be placed on the regular ballot in alphabetical order without partisan or other designation except the title of the office.

The committee on the Judiciary reported that the resolution ought NOT to be adopted, Mr. Maguire dissenting. It was first considered by the Committee of the Whole Thursday, August 2, 1917, and that committee reported to the Convention recommending that the resolution ought NOT to be adopted. Subsequently, it was recommitted to the Committee of the Whole.

The resolution was rejected Friday, June 14, 1918, by a vote of 125 to 2.

THE DEBATE.

Mr. MAGUIRE of Boston: This resolution, No. 197, provides for the election of judges by the people by a non-partisan method. The purpose of the resolution is to take the judiciary out of politics; to place it beyond party control or consideration; to make it really an independent branch of the government; incidentally, but of vital importance, to restore to the legal profession its former well deserved prestige, for in the operation of the amendment the selection of the judiciary, in my opinion, will rest with an active, vigilant, honest bar upon whom the people may confidently rely for assistance in making their choice of judges. A judge who receives his commission from the people has higher credentials than one who receives his appointment from executive authority. Certainly in a free Commonwealth this is not open to argument.

Under the present system of appointing judges, when a vacancy oc-

curs, and the administration happens to be Republican, the Democratic members of the bar remain still, remain silent, are not in any sense candidates for the vacancy. The candidates are from among the Republican members of the bar. The first effort of the candidates is to secure the support of the party leaders. If they have been particularly prominent in the party, if they have campaigned, if they have stumped, if they have been active in party councils, their chances of securing the appointment are increased in proportion to their services. After the candidates secure political support they then turn to the bar to get the endorsement of its members. This is hardly more than a courtesy, a bit of politeness, so to speak. It is simply an action taken to cloud or obscure the vision of the public with reference to the appointment. As a matter of fact, as a matter of common knowledge, in nine cases out of ten the appointment is political.

The same observations are true of the Democratic party when it is in power. There is no difference between the parties in the methods of making judicial appointments. In one case a Republican is appointed; in the other a Democrat invariably is selected for the vacancy. About five years ago the Democratic party emerged from a long "Egyptian night." It then elected Governor Foss, and he was succeeded by Governor Walsh. The party had five years of opportunity to make judicial appointments. When making appointments, invariably, — and I speak as a Democrat, — the main consideration was political. The first question was: "What has he done for the party?" The Republican members of the bar remained quiet. They were not active candidates for the vacancies. They knew it would be useless, that the Democrats would follow the example of their party and appoint partisans to the positions. It is only fair to say that when the number of appointments became so many that it looked a little strong, a little selfish to give them all to the Democratic members of the bar, a few of them were given to Republicans.

Now, I submit that the appointment of judges under party government is generally political. It can hardly be otherwise. Also, the system tends to minimize, if, indeed, it does not humiliate, the legal profession by practically forcing its members to curry the favor of political leaders and party organizations, if they would have their very necessary influence for a judicial appointment. Of the legal profession I need only say that Bryce regards it as the one educated class in the country, and that it has done much for the Republic from the beginning. There is no reason why its members should not take a vital, active, commanding interest in the selection of the judiciary. Under the present appointing system they do not, — they cannot. The party in power appoints the members of that party, — for services rendered. I say that regardless of whether it is the Democratic party or the Republican party. The minority party for the time being has little or no consideration in the matter of making the appointments. They are just as political as they can be, — just as political as the selection of a member of the Public Service Commission, or the Gas and Electric Light Commission, or any of the commissions that are under appointment by the Governor.

The article of amendment which I have presented is a non-partisan proposition. It provides that the candidates shall have certain qualifications and that their names shall be placed upon the regular ballot

in alphabetical order without partisan or other designation except the title of the office. It takes the judiciary entirely out of the game of politics and puts it before the bar and the people where it belongs. I contend that if the bar will be active and vigilant in the selection of the members of the judiciary, that if in any campaign it endorses A for judge because of his superior qualifications over B, the people will elect A. It is preposterous to think that if the bar supports a candidate in a given campaign, for a given judicial office, the people will not second them and approve their choice. The arrangement is almost ideal. A profession jealous of the standing and reputation of its judiciary deliberates on the qualifications of the candidates and submits its opinion to the people who act finally upon them. The tenure of office is for a term of years and mistakes, if any are made, can be corrected in a relatively short time. Contrast that with the present appointing system. There is nothing more humiliating, in my opinion, than to see a member of the bar trailing into a political headquarters, — Democratic or Republican makes no difference, — nothing more humiliating than holding the coat or the hat of a political leader, so that some time he may be able to get his support for a judicial appointment. And that is what happens under the appointing system. Think of a man who can bring himself to do such things being made a judge for life! In the Legislature, if a member of the House or the Senate is very active in railroading matters or helping the Governor to get a particular piece of legislation through, and a vacancy in the judiciary occurs, there is a strong probability that he will be appointed. Such cases have occurred. Surely there ought not to be any hesitancy in preferring the non-partisan method of selecting judges to the present political arrangement. And now is an opportune time for the change if the Republican party, for instance, is about to start on a long period of control of the State. It is unfair to eliminate the minority from consideration in the matter of judicial appointments and yet, by the custom of politics, that is just what will continue to happen unless the change is made.

The first objection that we meet when we propose an elective judiciary in Massachusetts is the fact that John Adams, in the framing of the original Constitution, in the Bill of Rights, — in the good old Bill of Rights, — Section 29, says:

> It is the right of every citizen to be tried by judges as free, impartial and independent as the lot of humanity will admit. It is therefore, not only the best policy, but for the security of the rights of the people, and of every citizen, that the judges of the Supreme Judicial Court should hold their offices as long as they behave themselves well; and that they should have honorable salaries ascertained and established by standing laws.

That is very well written, and in a very lofty tone. But twenty years later, when John Adams was President of the United States and about to retire, there were sixteen judges to appoint on the Circuit bench of the United States court. What did John do? I am reading from Bryce's "American Commonwealth." Mr. Bryce's advantage in treating all our governmental matters is that he views them objectively. Mr. Bryce says:

> Congress having in 1801, pursuant to a power contained in the Constitution, established sixteen Circuit courts, President Adams, immediately before he quitted office, appointed members of his own party to the justiceships thus created.

Who succeeded John Adams? He was succeeded by Thomas Jefferson, the man who wrote the Declaration of Independence, probably the greatest man among all the early leaders, certainly the man who did more to make this a democratic government, a democratic republic, than any of the others. When Adams acted that way had he in mind his earlier philosophy of 1780 as written in the Bill of Rights, and had he changed his mind? If not, what was his point of view? In the light of his conduct as President of these United States, appointing political followers or political workers, or what not, as judges of the Circuit Court, we are justified in rejecting his advice in the Bill of Rights because when clothed with high executive functions he discredited his own sentiments. It is perfectly fair to say that when he wrote the Bill of Rights he thought Massachusetts was going to be a Federalist State, and that members of his own party, and only members of his own party, were going to be selected for the judicial offices. It is also fair to say that he had no intention of keeping the judiciary out of politics. And as a plain matter of fact he put the judiciary very much in politics. He did not make it independent of the other branches of the government; he made it subordinate to the executive department for he placed the appointment of judges under its control.

Having touched on the Federal judiciary, — and the Federal judiciary invariably is cited as a fine example of the appointive system, — I shall call attention to what Bryce says of the Legal Tender cases, when the court was packed by no less a man than President Grant:

> In 1866, when Congress was in fierce antagonism to President Johnson, and desired to prevent him from appointing any judges, it reduced the number, which was then ten, by a statute providing that no vacancy should be filled up until the number was reduced to seven. In 1869, when Johnson had been succeeded by Grant, the number was raised to nine, and presently the altered court allowed the question of the validity of the Legal Tender act, just before determined, to be reopened. This method is plainly susceptible of further and possibly dangerous application. Suppose a Congress and President bent on doing something which the Supreme Court deems contrary to the Constitution. They pass a statute. A case arises under it. The court on the hearing of the case unanimously declares the statute to be null, as being beyond the powers of Congress. Congress forthwith passes and the President signs another statute more than doubling the number of the justices. The President appoints to the new justiceships men who are pledged to hold the former statute constitutional. The Senate confirms his appointments. Another case raising the validity of the disputed statute is brought up to the court. The new justices outvote the old ones; the statute is held valid; the security provided for the protection of the Constitution is gone like a morning mist.

That the appointed Federal judiciary is not entitled to any halo is further shown in the *Tilden* vs. *Hayes* contest when a number of them were appointed on the electoral commission. They voted on who should be President according to their political bias rather than in a judicial manner. Since then we have been mortified to see the income tax declared unconstitutional by one of the Justices changing his vote from yes to no.

Another argument, or shall I say obstacle, we have to meet when we propose an elective judiciary is what Rufus Choate had to say in the Convention of 1853 in favor of the appointive method. Inasmuch as Mr. Choate will be quoted here, and what he had to say urged as a reason for the continuance of the appointive system I think it well to read what some of his colleagues had to say in favor of the election of judges by the people. Their position seems sounder than his. They

have more faith in the people. They answer him sufficiently. I read from them:

Mr. Wood of Middleborough:

Now, if it is proper for the people to keep the power in their own hands, then the only way in which that can be done is to provide for the election of these officers by the people, as we provide for the election of all other officers. If it is not proper that the people should retain this power, it must be on account of one of two reasons — either, first, that the people at some time may not be desirous of electing proper officers; or else, secondly, because they have not sufficient intelligence to make a proper selection.

In regard to the first of these reasons which may be adduced, namely, that the people may at some time become so corrupt, or take so little interest in the matter, that they will not care whether proper persons shall be elected or not, no one, I presume, will undertake to sustain such a position for a moment. They are interested in this matter above all others. They are the only parties who are interested, for any one of us may be under the necessity of falling back upon the judiciary for the protection of our interests and our liberty. The whole people, then, are interested; and it cannot be otherwise than that they must always be anxious to keep the bench filled with honest and upright and learned and independent judges.

Mr. Hooper of Fall River:

It is admitted, — because it has been demonstrated in other States, — that the people of other States are fully competent to perform this duty, and surely no one will place the people of Massachusetts in an inferior position to the people of any State in the Union, in regard to intelligence and capability of self-government. Why, then, should they be denied the exercise of this right?

Mr. Holder of Lynn:

It has been said that the election of the judges by the people would destroy their independence, and make them subservient to political parties. I beg leave to differ from gentlemen who take that view of the subject. I believe it will clothe them with a true and god-like independence, based upon the popular will of the people. That, sir, is always true and unerring, and should always be regarded by all men who are in authority. I would ask gentlemen of this Convention if they wish to give the judge a salary and continue to guarantee it to any class of individuals who shall not be chosen by the people, and who are not popular with the people?

Mr. French of Beverly:

I do not see why a judge appointed by the Governor would not be as liable to be led astray by political prepossessions as a judge elected by the people. I am for retaining in the hands of the people all the power that belongs to them. Power, it is said, is always stealing from the many to the few; and that power which belongs to the people, I want them to hold.

Mr. Keyes of Dedham:

They tell us that the people cannot be trusted with the powers necessary for their own safety and their own salvation, and we shall virtually acknowledge it if we refuse to adopt the amendment. I believe, if there are any officers whose election can be safely intrusted to the people, they are the judges. I regard it to be so on the ground that the office of judge is one in which all the people are interested, and the integrity and respectability of those who are to occupy that office is near and dear to the hearts of all the people. Because the people are liable, in some degree, to feel their power and to be affected by their decisions, they will exercise a criticism and judgment in their selection that are not exercised in regard to any other class of public men.

Mr. Butler of Lowell:

The whole argument which was put by my friend from Manchester (Mr. Dana) appeared to me to proceed upon an entirely wrong basis, — upon a distrust of the people. And that was the case with the ingenious argument of the gentleman from Cambridge (Mr. Greenleaf) who, with the tact of an old lawyer, and the artistic finish of the profession, says: "Why, why do you wish to make the judges elective?

The people elect them now. They elect the Governor and the Governor elects the judges, and what more would you do?"

I say I think both the gentlemen have proceeded upon a wrong assumption. One fairly puts the argument that he distrusts the people, that he distrusts popular influence, an argument which proceeds upon the ground that every bad influence comes from the people, and every good influence from conservatism; it seems to put the argument upon the ground that the judges are only to be influenced by corporate wealth and power. If they can be rendered independent of the people, they say, it is well enough; but if you bring them within the influence of the people, they will be wrong.

The citations I have read answer, I think, Rufus Choate. They are from men, as we look back, who seemed earnest and red-blooded, men who had confidence in the people. Notwithstanding all the glittering and appealing generalities of Mr. Choate in his remarks, I submit that the confidence of these men, these old leaders, in the people, the feeling that the people can be trusted, is a much better argument, a much safer position and more to their glory than the sentiments and the attitude taken by Dana and Greenleaf and Choate and some of the others.

When this matter was discussed before the committee on Judiciary a number of the members of the Convention appeared in favor of the different resolutions. Conspicuous among those who opposed an elective judiciary was an attorney who very frankly and very bravely said that he represented the Boston Elevated Railway Company, and who also said that he spoke for himself. I asked him why his corporation, above all the corporations in the Commonwealth, felt it necessary to appear before the Judiciary Committee in opposition to these measures. He answered that his corporation at one time was a party to about sixty per cent of the cases in Suffolk County; the figure later fell down to fifty and now he thinks it is forty per cent. That appeared to him sufficient reason why he should come before the committee in opposition to the elective system over the appointive method.

My next question was: "Does your corporation under the present system take any active interest in the selection of judges?" He said that as a corporation there was no active interest in the selection of judges. I asked: "Do you as individuals take any active part in the selection of judges?" He hesitated, but finally admitted that he had signed a petition of endorsement of candidates for judicial appointments, but he did not like the practice. Now, I know of my own knowledge that at least one other member of his legal firm has endorsed candidates for judgeships, and I know that in the case of a district judge the man who had his endorsement was successful. I do not say that he is a poor judge, or that he is an indifferent judge, or that he is unfaithful; I simply assert the influence that secured his appointment.

The point that I wish to establish and to drive home is that the corporations are taking an active interest under the present system of selecting the judiciary. They do not expect a given judge to decide a given case, perhaps, in their favor; all they hope for is that a judge shall have a certain mental attitude on property and individual and other rights, — and brought up in a particular environment he is very apt to have a corresponding mental list; given that, they are perfectly satisfied to rest there. So naturally they object to the elective system, for under it the people will have more to say about the judi-

ciary; those selected to be judges will be certain to have a freer mental attitude on the questions that come before them.

I may say here that the attorney I have mentioned had no effect on, or influence with, the committee. I simply am bringing in the fact that the corporation was represented, to give the Committee of the Whole an opportunity to know its attitude on this question. No other corporation felt it was necessary to come before the committee and argue the matter. However, the attorney was not very happy in some of his arguments. At one time he would find fault with the jury system; at another time he would complain of the judges, their failure to set aside cases that he felt ought to be set aside. Again, he did not think the bar could be relied upon to take an active, vigilant interest in the selection of judges if this non-partisan elective method were adopted. His arguments were so inconsistent that I am obliged to say that he must have thought we were a different jury every time he spoke before us. When I noted his different attitudes to him, he was a little embarrassed.

I now ask the attention of the Committee of the Whole to the other great States of the Union. In thirty-seven of them the judges are elected by the people, in four by the Legislature, in three by the Governor and Council, — Massachusetts is one of the three, — and in three by the Governor and the Senate. All those States were organized and adopted Constitutions after our Constitution was adopted. They had the benefit of the philosophy of our Constitution, but in all the States with an elective judiciary the people rejected that philosophy, they insisted on keeping the right to select the judiciary in themselves. They believed the judiciary is most independent when elected by the people.

At my request the committee on Judiciary asked the Commission on the Compilation of Information for the Convention to send letters to the different States for the purpose of getting their point of view on the operation or the effectiveness of the elective system. The following letter was sent to the Governor, Attorney-General and President of the State Bar Association of the following States: Alabama, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Michigan, Minnesota, Missouri, New York, Ohio, Pennsylvania, Tennessee, Virginia, Wisconsin, Vermont, Maryland, and Nebraska:

DEAR SIR: — The committee on the Judiciary of the Constitutional Convention of Massachusetts, which is now in session, is investigating the subject of an elective judiciary. As your State has had such a system for many years, it would be of great assistance to the committee if you would send us a statement of your observation of the working of the system. You will, no doubt, understand better than I can tell you the sort of information that a Constitutional Convention sitting in a State which has never had an elective judiciary would like to have. From conversations that I have had with many of the delegates, I am sure, however, that they would like to be informed how far partisan considerations militate against the selection of competent judges. If you are willing to make a statement upon the point, it would be of interest to know whether, if the question were now an open one in your State, you would prefer an elective or an appointive judiciary.

Yours very truly,
(Signed) LAWRENCE B. EVANS.

The following are the pertinent portions of the replies thus far received. I am reading them all, whether favorable or unfavorable to the position I am trying to maintain.

The Attorney-General of Alabama:

I have your favor of the 12th instant, asking for my statement whether the elective or appointed judiciary would be more beneficial to the public service. In reply thereto, I beg to say that the conclusion on this question would be reached only after the consideration of many questions. In Alabama, for instance, at the present time the elective system is better than one in which the members of the Supreme Court were appointed by the chief executive. I rather think that probably the best system that could be devised would be one in which a limited number of names, not exceeding five, should be submitted to the Legislature by the Governor, and one elected from such number; providing for additional submissions in the event the ones submitted are disapproved.

The foregoing remarks are suggested by thought of the Supreme Court. I really think they might also apply to the selection of trial judges. In a great many instances the bench is not inviting to a lawyer who is studious and with judicial ability, for he would be pitted against one who is more politician than judge. If the candidates did not have to seek the individual vote, the campaign would be less expensive and it would result in a general consideration of the leading members of the bar for such offices.

My views are expressed without the result of mature consideration. They are merely impressions which to-day occur to me.

Partisan considerations in this State militate for or against the selection of judges. The prohibition question has become one of the leading public issues, which is now regarded in the selection of judges. Other questions will arise, of course, and it is natural that when the people elect men to office they will inquire what may be the views of each candidate.

These letters, as you will note, are read whether they are for or against the purpose of my resolution. Let the chips fall whichever way they may. As you no doubt have noted the letter sent out by the commission is absolutely fair, and its purpose is simply to gather information on the subject. The next letter is from the President of the Bar Association of Illinois:

At various times at our State bar meetings the question of elective or appointive judiciary has been discussed and the practice in your State has always been cited.

In Illinois we elect in each county a county judge, who has certain jurisdiction and also probate jurisdiction except in counties where the population is 70,000 or more in which counties probate judges are elected, city judges in some cities, depending upon the vote of the people, municipal judges in Cook County, circuit judges throughout the State and Superior judges in Cook County of the same jurisdiction as circuit judges, and Supreme Court judges. We have another court called the Appellate Court, the judges of which are selected from the circuit by the Supreme judges. The term of the county judge is four years, of the circuit six years and of the Supreme nine years. Partizanship to a greater or less extent enters into the selection of judges. The Illinois State Bar Association has urged non-partizan judiciary.

In this circuit is now a vacancy caused by decease. The lawyers of the circuit, comprising four counties, have selected a successor to be elected. The circuit is strongly one party and no member of any other party was considered. However, as our circuit was constituted some years ago we elected one of the three judges from the minority party especially because of learning.

In Chicago the lawyers very often endeavor to have a bi-partizan ticket and Mr. Tolman will write you more fully the method there followed.

It is a fact throughout the State the endeavor is to have on the bench the best men and if left to the lawyers I think very many would prefer a non-partizan ticket.

You have asked me directly "how far partizan considerations militate against the selection of competent judges." In my judgment, outside of Cook County, the competency of our circuit and Supreme judges is not affected injuriously by party considerations. On the contrary those considerations might make conventions more careful in their selection.

The Attorney-General of Illinois:

Our judges are elected in this State. What are known as our circuit judges are elected every six years, and our Supreme judges every nine years. Our county judges every four years.

Since it is the only system we have had in this State, we know nothing of any

other system. So far, the reputation of our judiciary has been good. We take pride in the fact that our Supreme Court has been considered an able court since the admission of our State, and we have always had good circuit courts throughout the State.

The election of our circuit judges and Supreme judges is held in the month of June. No other election is held on the day of the judicial election. This was intended to remove the election of judges from politics. However, we find that it does not do so, because our leading parties always have candidates for these positions.

As I have said before, our judges have usually been capable and deserving men, and political lines have not usually militated against this. However, it may be that in a few cases the best men have not been selected. That would occur occasionally in an appointment. There are a number of lawyers in this State who take the position that in our next Constitutional Convention provision should be made for the appointment of judges.

I have no means of knowing whether that will be a better plan than to elect.

The Attorney-General of Iowa:

Personally I am in favor of an elective judiciary. I am also in favor of a partizan judiciary. I am in favor of their nomination by convention and not by the system of a primary.

In this State we have always had an elective judiciary, both to our Supreme and inferior courts. I think I may say our bar is universally pleased with this method. We have on the whole had a very able and very satisfactory bench until the adoption of the non-partizan judiciary. Since the adoption of the non-partizan judiciary, we have found that there are thousands of voters who do not express their views upon the selection of the candidates for the judiciary and who fail to express any choice at a general election.

I think I may safely say that it is the consensus of opinion among the members of the bar of this State that the old partizan method of selection of our judges through the party convention was very much more satisfactory than our present method.

The appointment of judges by our Governors has been far from satisfactory. We have found in connection with these appointments greater objection to the men who have been selected through the appointment than the men who have been chosen at the election, and instead of the selection by election militating against the standard of the bench, we have found the standard of judges selected by that method superior.

If the question were an open one in this State, I would prefer an elective to an appointive judiciary.

On the question of a non-partizan selection of judges the trouble in those States where it has been apparently ineffective has been due to the fact that there have been no qualification requirements; that is, not enough restrictions as to the age of candidates and the length of time they have been members of the bar. All that is provided for in my resolution.

The Governor of Kansas:

I will say that we have, during our State history, operated under the elective system, the district judges holding four years and the Justices of the Supreme Court six years. While now and then some partizan elements enter in, the general result has been the selection of competent and conscientious men and the judicial history of the State has been remarkably free from any taint or scandal. Various plans have been discussed for judiciary selection in some other way, but nothing definite has come therefrom. I feel sure that if the people were again asked to vote on the proposition they would strongly favor the elective system.

Assistant Attorney-General of Kansas:

In this State all judges are elected. The judges of the Supreme Court by the electors of the entire State, judges of district courts by the voters of the various districts, probate judges by the voters in their respective counties. I have been practicing in Kansas about thirty years. Prior to that time my school days were spent in New Haven, Connecticut. I have occasionally noticed that judges have been elected apparently on account of the fact that the voters believed that they represented a policy of government being at the time widely agitated and receiving the approval of the general public. Some of those policies have been considered by many unreasonable and have been abandoned, and the judges who advocated them

have been retired with the change in the sentiment of the public. According to my observation in normal times party policies do not have nearly so much to do with the selection of judges as does the personality of the candidate. In those districts where a candidate is able to become personally acquainted with large numbers in different classes amongst the voters and where such acquaintance leads to his being favorably known, the candidate who becomes well acquainted generally receives a large support irrespective of party lines, but in the State at large where the average voter knows but little of the personality of the candidate for Supreme bench the candidates of the dominant party are generally elected.

The greatest difficulty in this State seems to be due to the fact that there is very little opportunity for candidates for judicial office to become generally known by the voters at large. A few years ago this State tried an experiment by having the judges of the different courts selected by a non-partizan primary. At that primary as many were to become candidates as chose to do so and at the primary twice as many candidates were selected as there were positions to be filled. That year there were three judges of the Supreme Court to be elected. The six who received the highest number of votes at the primary were therefore selected as candidates. The plan resulted in the defeat of two of the members of the Supreme bench who were candidates for renomination and reëlection. One was defeated at the primary and another at the election, and one or two persons who were totally unfit for such office received surprisingly large votes. It seemed to be generally believed that that plan threatened to very seriously jeopardize the standing of the Supreme Court and the law was promptly repealed. Personally, I do not think that partizan considerations in general have much more to do with the selection of judges in Kansas than would be the case if judges were appointed by the Governor or any other individual.

The Governor of Maryland:

In this State our judiciary are elected. The Governor has power to fill a vacancy only until the next general election. It is true that frequently nominations are made by the respective parties, but it is likewise true that unless each side nominates its best men they cannot depend upon the party vote, and it very frequently happens that a man of either party may be so strong that the opposing party will not make a nomination, and, while politics may have something to do with their nomination, if the judges make good they are very seldom opposed for party reasons. In our State, in my opinion, the strongest available men are nominated and elected judges. I have never heard our bench itself accused of being influenced by partizan considerations. I think our plan works very well in this State.

The Attorney-General of Maryland:

A good many people think that the judiciary in this State ought to be appointive, because lawyers quite often feel disinclined to subject themselves to political campaigns for election. At the same time my observation is that the people usually reelect a judge who has served satisfactorily, regardless of his politics, and very frequently elect a judge who has simply been appointed to fill a vacancy, if he has served satisfactorily.

I am inclined to think that the Maryland judiciary is of as high a grade under the elective system as it would be under the appointive system. What really ought to be done is to provide increased salaries, because the existing salaries are such that successful lawyers at least in Baltimore city, very often cannot afford to become judges.

The President of the Bar Association of Michigan:

Receipt of your letter of July 12th is acknowledged. The elective judiciary has been productive of reasonably satisfactory results in this State. It is open to the criticism that qualifications as a politician as well as judicial qualifications are necessary to secure election to the bench. A judge who has obtained his office through political shrewdness is peculiarly open to the charge of playing politics on the bench. This situation has developed a well defined belief quite largely entertained throughout this State (but by no means unanimous or even controlling) that judges should be either appointed, or be elected upon a non-partizan ballot. This question was before our Legislature this year, but died in committee. It will be before our Legislature again in 1919.

From these facts it may be gathered that the election of judges on partizan ballots is not wholly satisfactory. I believe that few lawyers in this State look upon the appointment of judges as a solution of the difficulty. The election of judges upon

non-partizan ballots (and by this I mean both a primary election ballot and a general election ballot devoid of indications of the party affiliations, if any, of the candidate) is believed by many to be a most available solution of the difficulty.

The Governor of Minnesota:

Prior to 1912 the candidates for the Supreme Bench were nominated by party conventions and the party designations appeared on the ballot at the general election in November. The district judges were nominated and elected in the same manner until 1902 when they were nominated at partisan primary elections and their names appeared on the general election ballot with the party designation.

Beginning in 1912 candidates for the Supreme District Bench have been nominated at non-partizan primaries and their names have appeared on the general election ballot without partizan designation. Nomination by petition is also possible in certain cases.

When the candidates were nominated at party conventions, able men were usually obtained, but the system had the effect of practically barring members of the minority party from the bench. This has been done away with by the non-partizan system, but it has made it possible for unexperienced or unworthy men to get on the ballot and often be nominated. Fortunately, the voters have been sufficiently interested so that it has been impossible for any of these persons to be elected, and the men elected to our district benches have been men of a high standing.

There are, of course, a number of people who find fault with our system, and at our last session a bill providing for non-partizan conventions to nominate candidates for judgeships passed one body of the Legislature but did not become law.

While we have the elective system in practice, many of the judges begin their service on the bench through appointment. Under our Constitution, vacancies are filled by appointment by the Governor until the next general election. In a large majority of the cases, the men appointed by the Governor are very frequently re-elected until they voluntarily retire.

The Assistant Attorney-General of Minnesota:

Your letter of July 12, addressed to Lyndon A. Smith, Attorney-General, has been referred to me for acknowledgment and reply, owing to the circumstance that the official duties of the Attorney-General at the present time occupy his entire time and attention.

I have lived in the State for a little over thirty years and during that period I have been quite in touch with public affairs, including the election of judges. I came to this State from New York where, as you know, the method of nominating the judges of the various courts is by separate party conventions. When I came here I found that the judges were selected at the general party conventions and such selection, on too many occasions, was along the line of barter and fray usually incident to party conventions.

The Legislature a few years ago abolished party conventions and nomination for all State, county and city officers is by primary election. Partizan nominations for judges, members of the Legislature and city and county officers have been abolished. Under the present practice, any member of the bar in good standing as such may become a candidate for nomination for judicial office.

If but one vacancy exists, the two candidates receiving the highest number of votes at the primary election become the candidates to be voted for at the general election and this irrespective of party affiliation. If two vacancies are to be filled, then the four candidates at the primary having the highest number of votes go upon the election ballot, and so on in case of more than two vacancies.

I am not prepared to say that the present arrangement has been tried out to such an extent that it could be said to be entirely satisfactory but my own observation does not predispose me in favor of an appointive judiciary in preference to an elective one. Both systems have their faults which may be ameliorated and reduced by the disinterested activity of the best element of the bar.

The Secretary to the Governor of Missouri:

I am quite sure the people of our State would not seriously consider changing from an elective judiciary to an appointive one. While no system is perfect and does not at all times secure satisfactory results, officials responsible to the people are as a rule more satisfactory than those only responsible to the appointive power. The great body of the people are as free from control by the spirit of partizanship as an official

in whom the appointive power might be vested. In the history of this State the instances in which partizan considerations have resulted in the selection of incompetent judges are very rare.

The Attorney-General of Missouri:

Replying to your inquiry of the 12th instant with reference to the subject of an elective judiciary, I beg to say that the elective system in this State has been reasonably satisfactory. From observations of the judiciary of other States, I think the men elected to judicial positions in Missouri are as capable, honest and fair as those selected in other States by appointment. The people very generally have great respect for, and confidence in, their judicial officers. There is very little criticism of the judiciary in this State.

I am inclined to believe that the recent primary system of nomination of all candidates for office, including candidates for judicial offices, is developing an unfavorable effect upon the judiciary.

I think I would oppose the nomination of the candidates for judicial offices by direct primary election but there would be no thought in this State of changing the method of selecting judicial officers from the elective to an appointive system.

The President of the Missouri Bar Association:

I desire to say that in our State the election of judges has been by popular vote ever since our State was admitted to the Union. We were fairly well satisfied with the selection of judges by vote of the people until recent years when we adopted what was known as the primary nominating law. Since that system has come into vogue lawyers of the State and our State Bar Association have urgently and persistently condemned this system as it resulted in placing upon the tickets the names of parties for candidates to our judgeship positions who are wholly unfit and largely because they happened to be good politicians. This system has only existed for the last four years and as it now exists we are strongly opposed to it. Prior to this time and when we had the system of nominations by delegates selected to nominative conventions we had very little complaint for, as a rule, in these conventions the leading lawyers of the counties, cities, and State were prominent in nominations which resulted in good men being placed upon the tickets both for the *nisi prius* and appellate courts.

Now as to the question of appointive judiciary: This I think, and our bar generally I think, entertain the opinion that this is bad if left in the hands of the Governor or any particular officer, for the reason that the appointments are usually made to pay some political debt and this has resulted in our State much to our chagrin, where Governors appointing men to vacancies upon the bench have made very grave mistakes, and in some cases ridiculous appointments. If the judges are to be appointed I think they should be appointed by the Supreme Court of your State, or in some other body that will look to the obligations. Therefore, in my opinion, if you could put it in the hands of the Supreme Court of the State or some other like independent body I would be in favor of the appointive system. If not, I believe the better system would be to have your judges nominated by the people by delegate conventions where the advice of the lawyers will receive attention.

This is my honest view of it after many years of experience in this State. Missouri for many years has had a very high class Supreme Bench. As it is at present I think it could be much improved. As I have said before the system of having the people vote by primaries has resulted in some cases and locally in many cases putting inferior men on the bench and have elevated them to the position simply because they were better politicians.

The Deputy Attorney-General of Nebraska:

The State of Nebraska has had an elective judiciary from its organization with which the people have been reasonably well satisfied, and there is no question but that a proposition now to change to an appointive judiciary would be very repugnant to the people of this State.

Nominations are made here by means of a primary applying to State as well as local offices. It is quite generally believed that this system does not result in as efficient men for State offices, including the State Supreme Court, as under the convention system. However, our whole judiciary is elected under a non-partizan system.

President of the Nebraska Bar Association:

Thirty-five years of experience and observation as an attorney, practicing before elective courts, have for many years led me to entertain the belief that an appointive

judiciary has many advantages over the elective system, and I have often had many lawyers from your State point to your appointive system with gratitude and pride.

Of course it depends somewhat upon the appointive power but I am satisfied that an honest, intelligent man, or two or three of them could make wiser selections than the general public as the qualifications of a judge are such that the general public knows very little about them and does not have the information to make a wise selection.

We have in this State, a part of the time, a commission for the purpose of assisting the Supreme Court in catching up with its work. Heretofore those commissioners were selected by the Supreme Court judges, with the result that we always had commissioners of high grade. The present commissioners were selected by the Governor, with not such happy or satisfactory results, — and I suppose there are abuses in both systems that it is impossible to eliminate. Perhaps the people who live in a State where the judges are appointed, feel that the elective system would be preferable, and the people who live in a State where judges are elected feel that they could get better results by appointing them. The fact is that in either case the lawyers of the various States, ought in effect, to select the judges by some practical method that could be worked out I think.

We are trying to work out a method in this State by which the lawyers shall as a body express their preference for Supreme judges.

The present Governor of Ohio is the Hon. James E. Cox, a lawyer by profession and a very able man. He says:

Assuming the question were an open one in Ohio, I should endorse the elective judiciary in preference to the appointive. The ballot is the most direct and efficacious instrument to be employed by the people for the enforcement of governmental responsibility, whether it be executive, legislative, or judicial. The elective system may, in sporadic instances, fail to insure to the judiciary that degree of efficiency that is claimed for the appointive method, but the latter mode would open the door to even greater and more serious faults, it seems to me.

I treat the question solely as it pertains to the State judiciary.

Former President of Ohio Bar Association:

If the question were an open question in Ohio, I should favor an appointive judiciary. Massachusetts, with its splendid judicial history behind it, ought not to change its system. It is the only wise system for Supreme judges. In Ohio, we used to nominate judges at periodical party conventions. Now they have the non-partizan ballot, any one can go upon the ballot by petition, where his name appears with all others without party designation, and as these names are rotated and the ballots mixed, no voter can tell in advance where the name of his favorite candidate will appear, for there are many candidates. I can assure you that we dislike the present system. If judges are to be elected every six years, as in Ohio, we prefer the partizan judge. We would like, however, an agreed partizanship that the leading parties might endorse the same man. We hope to secure from the General Assembly a law permitting parties to endorse candidates in advance of their appearing on the ballot and undertake to work out through that an agreed endorsement.

In 1914, a number of names appeared on this non-partizan ballot and two men who were never admitted to the bar and who were engaged in trade came within a very few thousand votes of being elected judges of the Supreme Court of Ohio.

The voter who does not know these men personally whose names appear on the ticket is at sea when he enters the booth who he should vote for and he might as often vote for the poorest and most incompetent of the number as the best qualified.

The difficulty complained of by the man whose letter I have just read would be removed if certain qualifications as to age and membership at the bar were made a prerequisite of candidates for judge.

The letter of the Deputy Attorney-General of Pennsylvania seems to be very strongly against a non-partizan election of judges. It says:

Your favor of July 12, 1917, addressed to the Attorney-General was referred by him to me for consideration and answer.

I have had occasion to discuss the merits and demerits of an elective and appointive judiciary with lawyers in this State upon numerous occasions, and while the sentiment of the bar is by no means unanimous, I believe the large majority of the lawyers of Pennsylvania, if the question were an open one in our State, would be in favor of an appointive judiciary for life, rather than an elective system.

I am quite sure that the Pennsylvania bar, with its knowledge of the situation, would regret exceedingly to go from an appointive to an elective system. On the other hand, a large majority of the bar, I believe, would prefer to go from the present system in Pennsylvania to an appointive one.

The lawyers in Pennsylvania almost without exception criticize our present system of electing judges upon a non-partizan ballot. We adopted this system in 1911. Many curious situations resulted.

First, it hurls a candidate for judge into the maelstrom of politics, and makes him run his own campaign, or have a self-appointed committee run it for him, instead of having a political party back of him.

Second, it requires a sitting judge, who is a candidate for reëlection, to get into the hurly-burly of politics and tends largely to reduce the respect which the people have for the courts.

Third, it requires the candidate individually to raise funds for his election.

Fourth, it has several times almost elected thoroughly incompetent men, because their names began with one of the first letters of the alphabet, as the names are put upon the ballots in alphabetical order. Our experience is that the great mass of people know nothing about, and do not even know the names of, judges of the appellate courts elected by the State at large.

When I speak of an appointive system, I am referring to an appointive system for life. An appointive system for a term of years has the same vices that an elective system has, and under such a system the judge seeking reappointment is prone to curry favors, or keep his ear to the ground.

That is a rather bitter arraignment of the non-partizan method of electing judges. However, I looked up the law he says was passed in 1911 and found it was enacted in 1913 instead. The act is entitled:

An Act to regulate nominations and elections for all elective offices of cities of the second class and all offices of judge of a court of record; providing for non-partizan nomination and election for said offices, abolishing certain existing methods of nominations in such cases and the use of party or political names or appellations.

I submit to the Committee of the Whole that the purpose of the measure is hopeful, lofty; designed, I presume, to improve certain phases of the government of Pennsylvania. The difficulty with the operation of the act with reference to the nomination and election of candidates for the judiciary is due in my opinion to the fact that there are no special qualifications required of the candidates, and anybody who is a member of the bar can be a candidate for judge. Let me read the nomination requirements of the act:

Nomination petitions of candidates shall be signed: (a) If for the office of judge to be filled by a vote of the electors of the State at large, by at least 100 qualified electors in each of at least five counties in the State. (b) If for the office of judge of any court of record other than a court whose judges are elected by a vote of the electors of the State at large, by at least 200 qualified electors of the county or judicial district as the case may be.

The only proper complaint that can be made against that act is that it does not provide specific qualifications for candidates for the judiciary. Evidently all the youngsters who had just been admitted to the bar became candidates for judge. The act as a whole is a very salutary one, — I wish we had one like it in Massachusetts. Under the provisions of the resolution I am discussing, I may say again, candidates for the Supreme Judicial Court must be at least thirty-five years of age and a member of the bar for at least ten years; for the Superior Court and the Land Court they must be at least thirty years of age and a member of the bar for at least five years; for the other courts they must have been a member of the bar for at least five years.

The following letters are in disagreement with the Deputy Attorney-General as to Pennsylvania:

Former President of the Pennsylvania Bar Association:

I sent a copy of your letter to my successor in the presidency of the Pennsylvania Bar Association, Hon. Wm. H. Staake.

I do not think, however, that I should place the burden of answering your important question entirely upon Judge Staake.

We have in Pennsylvania the following classes of judges — all elected with the following differences:

Appellate Courts: Supreme Court judges, seven in number, elected for 21 years and not eligible for reëlection.

Superior Court: Judges seven in number. This is an intermediate Appellate court; jurisdiction limited to controversies involving $1,500 and under; criminal case, etc. Its judges are elected for ten years and are eligible for reëlection; also

Local Courts: Judges of the Common Pleas and Orphans' Court, elected by the voters of the counties or districts respectively for a term of ten years and eligible to reëlection.

The arguments for and against the elective system are familiar to lawyers. The whole matter is well summed up in the question which concludes your letter: — "If the question were now an open one in your State, would you prefer an elective or an appointive judiciary."

When there is a vacancy in a judgeship, whether in the Appellate or in the lower courts, the Governor appoints one until the place is filled by the people at the next election. With judges appointed by the Governor, as above set forth, a Pennsylvania lawyer practicing in the United States Courts has a taste of both systems which means: That he is not unfamiliar with the appointive system.

If I had the power of making the Pennsylvania judges appointive or leaving it elective, I feel that I would not be willing to take the responsibility of making the Pennsylvania judges appointive. On the other hand, I would not were it in my power be willing to take the responsibility of making the Federal judges elective.

The President of the Pennsylvania Bar Association:

My predecessor, the Hon. Cyrus G. Derr, late president of the Pennsylvania Bar Association, has sent to me a copy of his letter to you concerning the preference for "an elective or an appointive judiciary." I fully concur in the position taken by Ex-President Derr, namely, "If I had the power of making the Pennsylvania judges appointive or leaving them elective, I feel that I would not be willing to take the responsibility for making the Pennsylvania judges appointive. On the other hand, I would not were it in my power be willing to take the responsibility of making the Federal judges elective."

Personally, in May, 1906, I was appointed a judge in the Court of Common Pleas No. 5 of the First Judicial District of Pennsylvania. The following November I was elected without any opposition at all, except from the Socialist Party, which at that time polled but a very few votes in this city. I was fortunate in being upon seven tickets, namely, the Republican (my own party), the Democratic, the Union (a reform party then polling a large vote), the Prohibition, the National Labor and Jefferson Labor parties. Since then, we have a non-partizan judicial primary law, and I will, under its provisions, come before the people on the 19th of September to determine if I shall or shall not be a candidate at the election in November next for the period of ten years from January 1st, 1918.

With us, there has been considerable dissatisfaction with some of the provisions of the non-partizan judicial primary ballot. Our law provides that a candidate at the primary who receives more than fifty per cent of the whole vote cast at the primary election becomes elected without reference to the November election.

There is some complaint also about the arrangement of the names on the ballot alphabetically, it being averred that those whose surnames begin with the A, B, C, D, E, of the alphabet have the greater chances of election than those whose surnames begin with letters nearer the end of the alphabet. In the judicial primary for judges of our new county or city court, called the municipal court, there were more than 100 names, and it was claimed that those having the names beginning with A, B, C, etc., had a great advantage in the election.

The Governor of Vermont:

In reply to your letter of July 12 written in behalf of the Judiciary Committee of your Constitutional Convention, inquiring about the subject of an elective judiciary:

As you of course know, our Supreme and Superior courts are elected by the Legislature at each biennial session. With us, this system has worked very well. All things

considered our present system at this time is the best adapted to our wants. It amounts with us to a life tenure, as the judges once on the bench, are reëlected biennially.

The Governor of Indiana:

I have your letter of July 12th. I have not time to enter into a discussion of the question of an appointive or an elective judiciary, but from what I have seen of the judiciary system working in Indiana, I am very certain that our method here is unsatisfactory and I would be inclined to favor an appointive judiciary as against an elective one.

I would hold the same opinion as to prosecuting attorneys and those charged with the enforcement of the law. I think we would get equally as good men and a better administration of the law under the appointive judiciary.

The Attorney-General of Indiana holds a contrary view:

In reply to your inquiry concerning our elective judiciary, will say, we are not ready to give it up. We elect for six years, and on the Supreme bench there are five members, — the terms beginning at different times. Under our Constitution legislative officers cannot be elected for more than four years.

Our Supreme Court was overworked and an Appellate Court was created with six members, three members in each of two divisions. It is the universal opinion of lawyers here that our court should consist of about eleven members and abolish the Appellate Court. It is generally thought that it would be better for our Supreme Court judges to be elected for a longer term and make their salary about $7,500 per year.

My idea is to have a court of eleven members, — each elected for a term of ten years, and a new man to take the bench each year except, of course, when there are two vacancies, then two new ones would take the places. I think too that they should be limited to one term, possibly it would do no harm for the term to be twelve years and the salary more than $7,500.

We have no trouble about politics on the bench or at least would not have if the terms were extended and the salary increased. Our Supreme judges now receive $6,000.

Personally I very much prefer the elective judiciary. The elective judge would probably be elected as a non-partizan, but if the Governor had the appointing of them, it would not only be partizan but would be from the particular party which he represents.

The President of the Wisconsin Bar Association:

In Wisconsin all attempts throughout the whole history of the State to give judicial elections a political cast, as the term "political" is ordinarily used, have received stern rebuke at the polls. It is true, however, that in the majority of cases the voters have simply ratified appointments made by the Governor to fill vacancies occasioned by death or resignation. Such appointments have been uniformly good and rarely of a political character. Reëlections, with rare exceptions, occur as a matter of course. The result is that we have uniformly had a great, independent and able court, generally so recognized throughout the country and are practically unanimous in favor of the elective system in this State, even where there are misgivings as to its advisability as general propositions.

Early in the history of this State it became a well-founded rule of our code of political morality that judicial elections should be entirely free from political considerations, and this rule, with rare exceptions, has been adhered to.

We here in this State are, however, conscious of the fact that in some of our neighboring States they have not been so fortunate in keeping their judicial elections out of politics, and the results in said States are said to be far less fortunate than in this State. You are probably aware that in our last Supreme judicial election a sitting judge was defeated for reëlection. This, I believe, was largely due to a secret campaign by organized labor. However, I do not think that the successful candidate was a party to that method of campaigning. I can say that all the more freely since personally I was in favor of the sitting judge. If this same method of campaigning should be employed in the future, the present sentiment in Wisconsin in favor of an elective judiciary may in time not be so strong as at present.

The Attorney-General of Wisconsin:

I think I am safe in saying that the unanimous sentiment of this Commonwealth thoroughly and unreservedly endorses our elective judiciary system. We feel that

we have, — and always have had, — an able and honest judiciary. The Supreme Court Reports of this State will testify to the ability of that court, and no suspicion is ever indulged of the absolute rectitude and honesty of the men holding judicial positions, whether it be upon the Supreme or circuit bench. You will observe that our judges are not elected at the general election. Our Constitution wisely provided that they should be elected at a special election held in the spring. The purpose of this provision was to divorce the judiciary from politics. This provision, coupled with the unanimous sentiment of the State, has enabled us to keep our judiciary absolutely free from political trammel. Perhaps I can cite you no more convincing proof of this than to refer you to the case of *State ex rel. Husting* v. *Board of State Canvassers*, reported in 159 Wis 216. At that time the court was composed of five Republicans and two Democrats. The five Republican judges sided with Mr. Husting, the Democratic candidate for United States Senator, while the two Democratic judges favored the contention of Francis E. McGovern, the Republican candidate for United States Senator. From this you will see that party considerations did not in the least influence the court in passing upon the controversy raised by the opposing candidates for United States Senator.

While our judiciary is elected under our Constitution, an election really means a life tenure, as there is a settled policy prevailing in this State to reëlect sitting judges. It is a rare, rare thing for sitting judges to have opposition for reëlection, and it is a still rarer thing for them to be defeated.

It is just possible that an elective system would not work so well that did not have back of it a public sentiment divorcing the judiciary from politics, and dictating the reëlection of sitting judges, but the system in this State is, indeed, most satisfactory in its results.

The President of the Minnesota Bar Association:

Our judiciary in this State, both for district court and Supreme Court, are elected by the people, all for a term of six years. We believe this has worked very well in this State. When we had the State Convention system, and judges were nominated at party conventions, politics entered somewhat of course into the election, as, the State being Republican, the judges elected where the parties did not nominate were the same judges.

We have now, however, the non-partizan system and there is no nomination, the names of candidates being placed upon the ballot without any party designation. The two candidates receiving the highest number of votes in the primary are the candidates placed upon the general election ballot, and the one receiving the highest number of votes of course is declared elected.

In this judicial district, — that is, the district of St. Louis, Carlton, Lake and Cook Counties (Duluth being in St. Louis County), — we have six judges. Two of these are Democrats and four are Republicans. The Democrats were each first appointed by the Governor when there was an increase of judges, and have been reelected by the people, no fight being made on them on account of their political faith. One of the Democratic judges was appointed by a Republican Governor. We believe that our judiciary in this country are as able as any appointive judiciary would be, and the same we think is true of our Supreme Court. The fact that no move has ever been made in this State to change the system, is fair evidence that it is working satisfactorily.

If the question were now an open one here, I should prefer an elective judiciary.

The President of Virginia Bar Association:

If by an elective judiciary, you mean a judiciary elected by popular vote, we have never had the elective system in Virginia, except for a brief period from 1860 to 1868. The judges in Virginia, except during this brief period, have always been elected by the Legislature, the Governor having the power to appoint judges to fill vacancies until the next regular session of the Legislature.

In West Virginia, judges are elected by popular vote, and I am somewhat familiar with the working of the system in West Virginia.

I would not be in favor of electing the judges by popular vote, and I do not think that in the nature of things the system could work well anywhere. The ordinary voter cannot determine the difference in the qualifications of men for judicial positions, and in most, if not all, popular elections the ordinary voter is influenced by other considerations than the peculiar fitness of the man for the position.

The appointive system, in my judgment, is the best system for the selection of judges. The system we have of electing judges by the Legislature had, from partizan considerations, resulted in placing on the bench some men who are entirely unfit. The appointive system, I think, removes further from partizan politics the

selection of judges than either of the other systems, and the responsibility for the appointment is placed on one man. For these reasons, I think it is the best system of the three.

The Governor of Tennessee:

In reply beg to say that we know, as a matter of history only, that in the early days of Tennessee, judges were appointed to office or elected thereto by the General Assembly, but the memory of the present generation does not reach back to that time, so that we have no standard in Tennessee of comparison, by which we can know the merits of the different systems. I believe that I may say with all confidence, however, that the people of Tennessee would not change this system if a Constitutional Convention were called, — and the question of calling a Convention will be voted upon by our people the 28th inst.

It is a rare exception when an unworthy citizen is selected to a judicial position in Tennessee. For the most part, they are chosen from our ablest attorneys. The system in this State, in my judgment, works as successfully, if not more so, than any appointive system.

The former President of the Vermont Bar Association:

The judges of our county courts and justices of our Supreme courts are elected biennially by the Legislature. There has never, so far as I know, been any popular demand for the election of judges by the people. There has been some opinion that the Governor should appoint justices and judges, but this opinion has never been very general. The commission appointed by our Legislature of 1908 to frame proposals of amendments to our Constitution did not recommend any such change. During the vacation of the Legislature the Governor can appoint to vacancies. Our general practice has been to reëlect his appointees. Nearly half of our judges of the last few decades have received their commissions in the first instance through the appointment of the Governor; but in 1913 our Governor made some appointments that were not confirmed by the Legislature. When we revised our Constitution by the adoption of amendments proposed by the Legislatures of 1910 and 1912, we changed the time of election and did not provide that the Justices and judges should continue in office until the Legislature met in January instead of October. Under the old Constitution the commission of judges expired December first, and they were elected in October biennially. Our Governor in 1917 proceeded to reorganize the court by leaving off some of the old judges and appointing new men. The Legislature, however, which met in January, installed the old judges in their offices. With a few exceptions, the judges have been first appointed by the Governor, and then has followed the election of these judges until they resigned or died. I believe it was Judge Poland of our State who once said to Senator Hoar that the Vermont judges who were elected biennially had a longer tenure of office than Massachusetts judges who were elected during good behavior. While there is more or less fault found with certain elections by the Legislature, yet the practice has worked so satisfactorily that I believe there is no general sentiment for any change in our present system of electing judges.

I will close reading with a letter from the Governor of New York. Governor Whitman, as you know, was for many years district attorney in the city of New York, and he has been Governor for several years. He has been very active in public affairs. What he has to say is of special value to this discussion.

The Governor of New York:

Taking it by and at large throughout the State, I think the elective system in this State has worked very well. Of course in New York city some men have been elected as Justices of the Supreme Court who might not have succeeded in obtaining appointments to that office. We have in fact at the present time upon the Supreme Court in this State quite a number of very satisfactory judges elected under our elective system who probably never would have been appointed.

Our Court of Appeals, as you know, is the highest court of appellate jurisdiction and has no original jurisdiction. Members as a rule have been of exceptional ability and character. These judges are elective, but it has frequently happened that both parties have united in selecting an individual of conspicuous ability and have avoided a contest at the polls.

I think that I can fairly say that outside of New York city partizan considerations

have not operated against the selection of competent judges, and to a very large extent this is true in the city of New York.

I think that I can also say that if the question were an open one in this State at the present time, the people would in my opinion declare for an elective rather than an appointive judiciary. While there is much to be said on both sides, I think on the whole that I should prefer the elective system rather than the appointive.

There is hardly anything that I can add to what has been said in those letters. They cover the whole question *pro* and *con*. I have read them regardless of how the chips fall, whether for or against the purpose of my resolution. Most of them, however, are in favor of an elective judiciary. Many of them point out that the non-partizan method is best. Where there is complaint of the non-partizan the cause rests upon the number of candidates, which can be eliminated, in my opinion, by qualification requisites for the candidates for the different judicial offices similar to those set forth in the pending resolution. The non-partizan method, I verily believe, will take the judiciary entirely out of politics. It will make the judiciary as independent as the executive and legislative departments of the government, for like them the judiciary will receive their commissions from the people. I may add even more independent, for the people will act, not along party lines, but as a collective body of citizens seeking the best men to administer justice.

As Bryce has well said: "To the people we come sooner or later. It is upon their wisdom and willing restraint that the stability of the most cunningly devised scheme of government will in the last resort depend." On that philosophy is my resolution based, — the philosophy of trusting the people. I am attempting to put the power over the judiciary in the hands of the people where it belongs. I am trying to remove the possibility of the sinister influence of corporations or special interests of any kind in the appointment of the judiciary. I am trying to take away from the Republican party, the Democratic party and any other party the temptation to use judicial appointments as a matter of politics. I am in effect making the bar free from party influence and party leaders, and placing upon it the responsibility of assisting the people in selecting the best qualified of its members for the judiciary. In short, I am striving for an independent profession, and an independent judiciary serving the common good. I trust it is not too much to hope for success. [Applause.]

Mr. SULLIVAN of Salem: As the member of the committee on Judiciary in charge of our adverse report on this resolution (No. 197), I wish to say it is not the desire of the Judiciary Committee to tire members of the Convention with any long debate on this question, especially in view of the extremely hot weather. We made a special assignment and gave special days for hearings on this matter of the election of judges, contained in this and kindred measures. They were perhaps the largest attended of any of our hearings. After going over them at great length in executive session we arrived at the conclusion, Mr. Maguire alone dissenting, that the resolutions ought not to pass. Unless there is further objection made to the report of the committee by some of the delegates present, the committee on the Judiciary are willing to rest their case with the Committee of the Whole and the Convention.

The Committee of the Whole voted to recommend that the resolution ought NOT to be adopted and it was so reported to the Convention which, at a subsequent date, recommitted the subject-matter to the Committee of the Whole.

The Convention, having adopted an order at the beginning of the session of 1918 suspending the operation of the rule providing for the consideration of subjects as a Committee of the Whole, resumed the discussion Thursday, June 13, after defeating a proposition to postpone the debate until a later date.

Mr. JAMES H. BRENNAN of Boston: I had hoped that postponement of this measure, or these amendments, would prevail at the request of the venerable member of the Convention from Fall River (Mr. Morton), to whom I believe common courtesy should accord the privilege of a postponement; because, while we are in a mood whereby we desire to hasten progress here and to hasten action on these amendments let us not forget that we are assembled here as a deliberative assembly. This is a question of great importance, and at the request of the gentleman from Boston who has been spoken of in the debate (Mr. O'Connell) the venerable ex-judge of our Supreme Judicial Court asked for a postponement, which was denied him and which, in my humble opinion, should have been granted. Haste sometimes, Mr. President, makes waste.

But now that the will of the majority here has decided that this question shall be settled, or that the discussion shall be started, at this time, I believe we should not pass over lightly this great big question. Nowadays there is a widespread movement all over the civilized world to give greater control of public functions to the people wherein the right of government should vest. The attitude of this Convention toward this measure has not been of a serious description. It may be due to the fact that in this body almost fifty per cent of the total membership are of the legal profession. Those gentlemen who look at legislation not from a material or an economic standpoint but from the viewpoint of the legal and judicial mind oftentimes get a wrong viewpoint of public affairs, because the legal viewpoint is not always the correct viewpoint on matters of this sort. Let us remember that we were not elected to this Convention as lawyers, or doctors, or bankers, or farmers, or businessmen; we were elected here as citizens of the Commonwealth, as delegates to a Constitutional Convention; and when we enter the chamber here we leave outside our profession, or our trade, or our business, or our occupation, and we should consider these matters not from a selfish, personal, individual viewpoint, but from the standpoint of what is best for the people of the entire Commonwealth.

This is a tremendously important question. In the Convention of 1853 it occupied the attention of the delegates to that Convention for a considerable time, and many of the great minds of that Convention were of the opinion that this amendment should be adopted. Many of the ablest and brainiest men who were delegates at that time gave their serious thought and speech to this measure. And yet when this matter was considered last summer it was brushed aside as if it was a mere joke. I want to say to the delegates in this Convention that there is a widespread sentiment throughout the entire United States for a further spread of public control of public officials through the medium of the ballot-box. We have seen it right here in our own Commonwealth. There were those, Mr. President, who thought that the very Commonwealth itself would fall when first the subject of direct election of United States Senators was proposed, and yet that was adopted as one of the basic principles of our govern-

ment, and now our United States Senators are being elected by direct vote of the people. One of the most important offices in the gift of the American people, outside of the Presidency, is a United States Senatorship, and that office is now under direct control of the people of the Commonwealth through the vote. Our United States Senate has not suffered, it has not deteriorated, and the standard of public officials and of United States Senators has not been lowered in any way. A few years ago, when the matter of direct election of State officers was suggested, there were those timid souls in this State who thought that our entire fabric of government was threatened with a downfall; and yet in the Legislature just adjourned, when an attempt was made to go back to the old Convention system, — the corporation controlled and boss-ridden Convention to nominate State officers, — those measures were overwhelmingly defeated by the representatives of the people of Massachusetts in the House of Representatives. And so on down the line the tendency has been to give greater control to the people of this Commonwealth over the affairs of their own government. I believe that in keeping with forty-two other States of this Union which now elect their judiciary and which have a splendid judiciary system, we in Massachusetts, who pride ourselves on our learning, and on our education, and on our patriotism, and on our progress, are no more capable in any of those lines, and are not superior in any of those lines to many of the Commonwealths that now are electing their State officers.

Massachusetts is a proud old State. We have much to be proud of. But a few weeks ago I had the honor of participating as a campaign manager in a district on the Liberty loan, and it was my humiliation to read reports from the treasury of the United States that in three days the city of Detroit, Mich., which is about half the age of the city of Boston, had subscribed $30,000,000 to the Liberty loan. I read that Wisconsin had "gone over the top" three weeks before Massachusetts. I read that dozens and scores of other cities and States were far in advance of my old Commonwealth. I stopped to reflect as to why that condition should exist, and I have come to the conclusion that we in Massachusetts are standing too much on precedent, that we are standing too much on the reputation established by the fathers of this Commonwealth, and that we are living a great deal in the past. We should set our eyes to the future. Therefore I say that we must be up and doing if we are to compete with the live, active, progressive communities and States of the middle west, which are leading Massachusetts to-day in a great many undertakings.

Let us look at the State of New York, where an elective judiciary system prevails. Has New York suffered from an elective judiciary? Has New York gone back? Why, the port of New York in ordinary times exports thirty times as much in one day as Boston does, or, in other words, New York city, which is about the same relative age as a municipality as Boston, exports in one day what Boston exports in one month. New York is the metropolis of America, the greatest city in the world to-day, and contributes in every public movement from one-third to one-half of the total subscription, and it is a magnificent credit to the American Nation. They have an elective judiciary system in New York. Has New York suffered? Have her judges been weak? Have her judges retrograded? Of course they have not. I

say to you, Mr. President, that we should give this matter our very earnest consideration from the standpoint of what the people of Massachusetts desire, and not what we as individuals here desire.

The greatest argument that has been advanced against this amendment by its opponents has been that you will contaminate the courts with politics, that you will subject judges to the influence of politics, and that the wicked contact of partizan politics will cause them to lean partizanward in their decisions. As a young man, as one of the younger delegates in this Convention, in an assemblage no doubt the great majority of whom are my peers intellectually and otherwise, I wish to state humbly that, in my opinion, it is the most cowardly and the meanest opposition that could be put forward by educated, intelligent men. Politics will weaken the judiciary! What is politics? Politics is the function of operating a government under a republican form of government. Politics runs our Nation. While to some politics may be considered as an undesirable word, yet look up the definition of politics and you will find that in the fundamental basis of the meaning of the word it means the function of civil government. Politics elects the President of the United States, who holds in his hands the destinies, not alone of the judiciary and of meaningless decisions on small matters or big matters, but who holds in his hands to-day the balance of the future of this world; and yet, with his ponderous responsibilities and with his tremendous cares on his shoulders he must come before the American people again, if he desires to, as he did a year ago last fall, and say to the sovereign power of this great republic: "I am your President; I am commander-in-chief of your army and your navy; I have the responsibilities, not of all nations on my shoulders, but I have the cares and responsibilities of civilization on my hands, and I place my case in the hands of the great American jury." By their verdict they decided that he was a faithful servant, and they returned him to the greatest office in the world to-day, — to the Presidency of the United States of America.

These men who sit in their majesty over the courts of our Commonwealth say: "We are immune from politics," but our great President, who is one of the greatest men in the history of the world, must come before the people and submit his case to the political consideration of the people of the entire United States of America. And these judges, — and I do not want anybody here to misunderstand me, I have no personal reference to anybody or to any honorable judge who sits in this chamber, — many of them, have been politicians. Many of them have served in the House of Representatives. Many of them have served as members of the State Senate. They went before their people and begged votes and pleaded for votes and asked for votes to elect them to those offices. And then the solemnity and the sanctity and the halo of a judgeship loomed up in the horizon and they immediately became greater than any political consideration, and they forgot the fact that at one time they were politicians in every sense of the word, and that when they went on the bench they no longer were affected by political considerations. Further than that, many of these judges never would have occupied their positions on the bench to-day if it were not for political indorsements, going to a chief executive of their Commonwealth elected by the votes of the people and sending to him every political Tom, Dick and Harry who could be

reached, to secure their appointment. And yet they must be preserved from the taint of politics!

I wish to contradict the statement that it will drive the judges into politics. I want to say, Mr. President, I think it will drive a great many judges out of politics. I know of numerous instances where judges do not hesitate to exert the influence of their office to favor or disfavor certain political candidates. I know of instances where judges do not hesitate to solicit votes openly for or against certain candidates. And I say to you that while it may be true that it might drive a very few judges into politics it would drive others out of politics. So that argument works both ways.

Further than that, can you imagine the childishness of an argument which says that a judge, if he were surrounded by political influences, would decide favorably or unfavorably as the influence might lean to a defendant at the bar of justice? I believe that our judges are honorable men, I believe that they have the courage of their convictions, and it is a charge of cowardice for anybody to advance that a judge on the bench of Massachusetts would so far forget the law of the Commonwealth and the evidence of the case upon which he was sitting that he would let political considerations influence him in his opinion. I am not a lawyer, and I am not thoroughly familiar with the law, but I do know that the only consideration upon which any judge of our Commonwealth ought to decide any case should be the evidence and the facts presented to him and the law surrounding that particular case, and the statute, and to impute any other intention to any honorable judge of this Commonwealth is not helping their cause; it is hurting it. I believe that it is a very petty argument to advance in opposition to this great measure.

Let us look to the future. Let us practice what we preach. We are not here to-day enacting amendments or constitutional legislation for the year 1918 alone; we are enacting it probably for fifty, seventy-five or a hundred years. What we do here will be noted in the future, and we shall be passed upon either as men of wisdom or men who lacked wisdom. Let me say to you that there is an underlying sentiment all over this great world to-day, a spirit of unrest among the masses of the people, that the time for autocratic rule by the few has passed, the time for the rule of the people has come, and the spirit of democracy is now being fought in one of the most volcanic upheavals that the world ever has known. Let us start here and instill democracy in our own Commonwealth. Let us place the three branches of our State government on a democratic basis, — by democratic I mean not political, but on a basis of civil government.

Of our three branches of government two, the legislative and the executive, to-day are under a democratic form of government, and they are responsible directly to the people of Massachusetts. The Legislature of Massachusetts creates these legislative offices. It regulates the salaries of the judges, and it regulates their pensions. It enacts all the statutes which the judges and courts interpret, and it is the Great and General Court, the highest court in the Commonwealth. Yet the Great and General Court must go before the people to secure their positions as public officers. The executive department, working in coördination with the legislative department, appoints the judges on the bench. The executive department creates the judgeship and

fills the position by nominating the candidate who is selected for the position. The executive must go back to the people. The Governor of the Commonwealth must go back to the people and submit his record to them for their scrutiny. And yet while the department that creates and the department that appoints, namely, the legislative and the executive, are responsible to the people, the creature that they create is greater than both departments and greater than the people themselves. Should that exist, Mr. President? Ask yourselves if we should have two branches of our government directly responsible to the people and one branch of the government responsible to nobody but themselves, whose authority is more autocratic than that of any other government official in the United States of America, who are above the reach of the Legislature, above the reach of the Governor and above the reach of the people who pay the bills, who create them and who are supposed to be the sovereign power of our Commonwealth.

We are living under a system that was handed down to us from the early days of the old Massachusetts Bay Colony, when the judges were appointed for a life tenure of office as a reward for their fidelity to the King of England. In England the practice always prevailed that the King appointed his own councilors, his own judges, who held their offices for life or during the life of the reigning king or queen. When that sovereign died, or when his term of sovereignty ended, those judges, unless reappointed by the incoming sovereign, were removed from office, but they maintained their tenure during the service of the king or queen who appointed them. You all know Massachusetts history. We were a Colony of the English government, and the English customs and the English laws prevailed in Massachusetts, and our judges were appointed then and are appointed to-day under the English monarchical form of judiciary system. We have inherited, I might say, a great deal of our common law and a great deal of our law from the old English common law, and this is one of the practices that we have adopted from England and that we failed to throw off when we established a democracy here in the United States of America. In my humble opinion the time long since has passed when we should imitate any foreign country, any country which is a constitutional monarchy, and when we should imitate any other foreign nation in any of their customs; and yet we are doing it to-day in our judiciary system, Mr. President, and I think it is time for a change.

We have seen the progress of the times. We have seen kings and czars and emperors deposed from their thrones. At one time the divine right of kings was a recognized principle in some countries. In this country, up to the time of the Revolution, when we repudiated that policy, it was a recognized policy here by the Tory element of our population. But the divine right of kings is a relic of the dim past, and the divine right of any man, no matter who he may be, to occupy any public office without the consent of the governed also is a relic of the ancient past. I believe that in order that we may have a truly democratic government, all of our public officers, regardless of the department in which they may be engaged, should be compelled to go back to the people, who are the fundamental Governors of this American government, and to receive anew their commissions of office if they so deserve. [Applause.]

We have just witnessed during our last session an act further protecting the judiciary of the Commonwealth from the control of the people of this Commonwealth. We passed an amendment here providing for the initiative and referendum, which I voted for and believed in. But in that measure as it stands to-day is an exemption clause exempting the judiciary of our Commonwealth from the provisions of the I. and R. I voted against that exemption because, in my opinion, it makes the I. and R. class legislation to-day. The entire masses of the people are going to benefit by the I. and R., the entire Commonwealth is going to benefit by the I. and R.; and yet one small coterie of men in this Commonwealth have a constitutional exemption which should not exist. Why should any set of our citizens, whether they are superior or inferior, whether they are better equipped mentally or not so well equipped mentally, — why should any class of our citizens be excluded from the operation of any amendment offered or adopted in this Convention? I believe that that was one of the biggest mistakes made by the lawyers of this Convention when they insisted that the judges of our Commonwealth be given greater privileges and greater sanctuary from the operation of our own Constitution than the people themselves who are the owners of the Constitution. If I had my way that exemption would be stricken out of the I. and R. amendment. And the time will come when, by constitutional amendment, it will be stricken out of that amendment by action of the Legislature, because, as I have said, we are creating a constitutional oligarchy; we are creating a set of men who are so far above, who are so far secure from constitutional and legislative interference that, to-day, they are governing the governed instead of the governed governing them. Our Commonwealth, in the constitutional provisions laid down by the fathers of this State, wisely decided that the people should govern and that they should not be governed without their consent and that they should be paramount and supreme in all matters affecting political questions. And yet, my friends, we have overturned that principle and the people are not supreme. The people now are being dominated by one branch of the government which is far above all other branches and all other parts of the political divisions of this Commonwealth. And therefore I say, in my opinion, it was a mistake that will be rectified, I believe, before many years have passed, to exempt any class of our citizens from the workings of the I. and R. amendment.

We should allow the people of Massachusetts to decide for themselves on this great question. It is not a question for us to decide. The Constitution of Massachusetts is not our property. As citizens of the Commonwealth it is our property; as delegates we simply are the custodians of that Constitution. We are here to alter, revise and amend, — not to take possession. We simply are in temporary custody of that important and sacred document, and let us not, in our possible selfish desires or selfish opinions, say to the people of the Commonwealth: "We say to you that this should not prevail." Why should the servants of the people dictate to the people who are hiring them to come here and amend this Constitution? We are not here to dictate, we are here to serve, and we are amending the property of the people of the entire Commonwealth.

We adopted three amendments at the last session. They did not

become part of our Constitution because we voted on them; of course not. We had to submit them to the people for their approval or their rejection, and they decided that our course was a wise one, that our amendments were beneficial and that they were to the advantage of the people of the Commonwealth; and they were adopted. If they had been rejected they would not have become a part of our great Constitution. Therefore I say it is not our duty to say to the people: "We don't want this; in our judgment this is unwise; our Constitution should not be altered so that we may appoint judges for a limited term." We should not take that attitude, my friends. We should say to the people of the Commonwealth: "We are your representatives; you sent us here as your delegates. We submit this matter to you for your approval or your rejection." That is the attitude we should take on this matter. At the present time we have in the service of the United States government over two and a half million of young men, — young men who have gone out in the full vigor of their manhood to fight for the United States of America. Almost three-quarters of a million of them are now on foreign soil. Those boys are offering up everything that they possess to the United States of America; and when the Massachusetts boys come back to America after fighting the battle of democracy and when they realize that in Massachusetts we have only a two-thirds democracy and a one-third autocracy, they are going to say to themselves: "We might have started house cleaning at home. Our Constitutional Convention might have given our people an opportunity to vote on this great question. We have fought for the principles of the control of the government by the people and we believe that it should be adopted in all of its branches. If we are sincere in our desire for democracy abroad we should practice it here at home."

We are sincere in our desire for democracy and we are going to accomplish it; but let us be consistent here in Massachusetts and fall in line with the forty-two other Commonwealths of America which have this system in vogue.

Our Constitution very wisely provides that this government shall be "a government of laws and not of men," and that is why we are here. We are here to amend the basic law of our Commonwealth which will endure forever, which will stand for centuries as it has stood for several centuries already. We shall pass to the great beyond as did our predecessors of 1853. Men are like "ships that pass in the night." They come and go and pass by, but good law and good doctrine and a sound Constitution endure forever. Two of our governmental branches are branches based on that doctrine, — government of law. We should extend that policy to the third branch of the government. Make it a government of laws and not of men. Fifty years from now there will be an entirely new set of judges sitting on the bench of Massachusetts, but the basic law of the Commonwealth will be practically the same. And let us adhere to that old doctrine that we should insist that this be a government of laws and not of men. Those men who sit on our bench are simply the instruments through which the law is interpreted, and the people of Massachusetts are the ones to be finally considered in all of those interpretations. It makes no difference who interprets those laws as long as they are interpreted fairly, honestly and impartially, and I say that the people should have control of that department as well as of all others.

In 1853 a member of the Convention stood up and in reply to the encomiums of praise that were being heaped on the judiciary, — and which no doubt were deserved as they would be to-day, — said: "I want to remind the gentleman who has just spoken that these judges are, first of all, human. They are men, and, naturally, being human, are fallible." I want to remind you that they are, secondly, lawyers, and, thirdly, they are judges, and our Constitution says that we shall have a government of laws and not of men. Judges are human, judges are fallible, judges can make mistakes as well as any other men. And let me point out to you two recent decisions of our great United States Supreme Court. They were asked for an opinion as to the constitutionality of the draft law passed by Congress, which takes the bodies and souls of our young men to defend the Nation. They very rightly decided that that law was constitutional, as it is, because the men were going to fight and give up their liberties and their lives for the benefit of the great people of the United States of America. We all acquiesced in that decision. But a few days ago, when the child labor law came up for decision, these wise men sitting in their judgment decided, five to four, that that law was unconstitutional; and why? Because it interfered with commerce; it interfered with some or with many men making money; because it interfered, as they said, with States' rights; it interfered with industry; it interfered with the industrial relations of the different Commonwealths. They did not stop to consider that human lives and human rights should be paramount to any other consideration of this great United States of America. If that law was constitutional which took the lives and the souls of our young men to fight in the war, how in the name of decency and common sense could they decide that the labor of poor children could not be regulated without an interference with the Constitutional rights of the States and with the rights of individuals? And yet these men are supreme in their wisdom, supreme in their judgment, and they must not be contaminated by the control of the people who really created them and who are supposed to control our government.

I say that we should give this matter our serious attention; that we should pause and give this our great attention. Do not hurry over this great problem. The people of the Commonwealth will believe that we are derelict in our task if we do not devote considerable attention and deliberation to this great question.

Let me quote further. On page 23 of to-day's calendar there is a petition filed by the American Federation of Labor trying to bring out what should be a fundamental principle of our Commonwealth and which I believe our fathers intended should be in the Constitution but which a judge or judges of our Supreme Judicial Court have contradicted; and that is that labor, the toil of the hands of an honest working-man, is not a personal right, but as they say, it is a property right. Child labor is a property right. The labor of the working-man is a property right, in the courts' opinion, but not in mine, nor in the mind of any intelligent man in this Convention. And yet with decisions such as those facing the intelligent electorate of our Commonwealth and of our Nation, men have the temerity to rise in this Convention and to say that these men are sacred, that they are infallible, that they are of a superior mentality and must not be brought into contact with the wicked people who play politics.

In conclusion I simply want to say that the people of this Commonwealth are supreme. It was intended they always should be supreme. It was intended that the people should dominate the government and not the government dominate the people. It was understood that right and justice always should be the principles of this grand old Commonwealth of Massachusetts. And I say in my closing words that if the legislative department can trust the people, that if the executive department can trust the people, then I say to you that the judicial department should and must trust the people. [Applause.]

Mr. MAGUIRE of Boston: I am sorry that the request of the chairman of the committee on the Judiciary (Mr. Morton) for a postponement until Tuesday was not granted. I felt, when the gentleman from Waltham (Mr. Luce) objected so strenuously, that he was particularly interested in the matter for debate. I regret very much that he is not present during it. I miss also some familiar figures, men who are leaders of the bar, — the gentleman from Wellesley (Mr. Pillsbury), the gentleman from Lancaster (Mr. Parker), the gentleman from Southborough (Mr. Choate), and the gentleman from Brookline who sits in the fourth division (Mr. Whipple). These judiciary matters are probably the most important that are before the Convention. They certainly ought to have the full attendance of the members of the bar at least, and particularly members who arise and object to postponement for the reason that they wish the Convention to finish their business. It seems to me that they ought not to leave the chamber except for some very important reason. [Applause.]

The resolution under debate is No. 197. I offered this resolution because it seems to me that it will take the judiciary out of politics. I will not read the whole of the resolution, but only the last paragraph, which provides that

> The names of all candidates for the office of judge of the several courts aforesaid shall be placed on the regular ballot in alphabetical order without partizan or other designation except the title of the office.

Now I hope that some of the members of the Convention who oppose this measure will set forth their reasons, will establish or try to establish the philosophy which prompts them to object to the proposed amendment. The delegates to this Convention were elected on a non-partizan basis and we may take some credit in the fact that perhaps it is a very able assembly, perhaps the ablest, some experts say, that ever has gathered together in the Commonwealth. That being so, to my mind it follows that the judiciary elected on some such plan as provided in the resolution which I have submitted will be taken out of politics.

Mr. Maguire continued his argument Friday, June 14.

In my opening remarks yesterday afternoon I called the attention of the Convention to the fact that the proposed amendment provides for the election of judicial officers by a non-partizan method. A provision is made in the resolution for certain qualifications for the candidates for the several courts, — for instance, the Supreme Judicial Court, that they shall have been members of the bar for a certain number of years and also shall have attained a certain age.

In offering this resolution I am actuated by the feeling that since the adoption of the Constitution the judiciary has been in politics,

because of the fact that judges are appointed by the executive branch of the government. To show how much they have been in politics I shall read the record of appointments of judges to the Supreme Judicial Court and the Superior Court. The record for the minor courts is not available, because of the difficulty in getting the statistics, but the record in the lower courts is even more partizan than the record of the higher courts which I am about to read. The record begins at Governor Wolcott's period, and comes down to date.

In reading this record I am not actuated by anything but fair play. Whatever the record shows I am willing to abide by it.

Roger Wolcott, Republican, Governor during the years 1897, 1898 and 1899:
Appointments to Supreme Judicial Court: Oliver Wendell Holmes, Republican; John W. Hammond, Republican; William Caleb Loring, Republican.
Appointments to Superior Court: William P. Stevens, Republican; Charles U. Bell, Republican; John A. Aiken, Democrat.
Five Republicans and one Democrat.

W. Murray Crane, Republican, Governor during the years 1900, 1901 and 1902:
Appointments to Supreme Judicial Court: Marcus P. Knowlton, Republican; Henry K. Braley, Democrat.
Appointments to Superior Court: Frederick Lawton, Republican; Edward P. Pierce, Republican; Jabez Fox, Democrat; Charles A. DeCourcy, Democrat; Robert O. Harris, Republican; Lemuel LeBaron Holmes, Republican; William Cushing Wait, Republican; William Schofield, Republican.
Seven Republicans and three Democrats.

John L. Bates, Republican, Governor during the years 1903 and 1904:
Appointments to Supreme Judicial Court: None.
Appointments to Superior Court: Lloyd E. White, Republican; Loranus E. Hitchcock, Republican.
Two Republicans and no Democrats.

William L. Douglas, Democrat, Governor during the year 1905:
Appointment to Supreme Judicial Court: Henry N. Sheldon, Republican.
Appointments to Superior Court: John A. Aiken, Democrat; John C. Crosby, Democrat; John J. Flaherty, Democrat.
One Republican and three Democrats.

Curtis Guild, Jr., Republican, Governor during the years 1906, 1907 and 1908:
Appointment to Supreme Judicial Court: Arthur P. Rugg, Republican.
Appointments to Superior Court: William F. Dana, Republican; John F. Brown, Republican; Henry A. King, Republican; George A. Sanderson, Republican; Robert F. Raymond, Republican.
Six Republicans and no Democrats.

Eben S. Draper, Republican, Governor during the years 1909 and 1910:
Appointments to Supreme Judicial Court: None.
Appointments to Superior Court: Marcus Morton, Democrat; Charles F. Jenney, Republican.
One Republican and one Democrat.

Eugene N. Foss, elected as a Democrat [laughter], Governor during the years 1911, 1912 and 1913:
Appointments to Supreme Judicial Court: Arthur P. Rugg, Republican, appointed Chief Justice; Charles A. DeCourcy, Democrat; John C. Crosby, Democrat.
Appointments to Superior Court: Joseph F. Quinn, Democrat; John D. McLaughlin, Democrat; Walter P. Hall, Republican; Hugo A. Dubuque, Republican; John B. Ratigan, Democrat; Patrick M. Keating, Democrat; Nathan D. Pratt, Republican; Frederic H. Chase, Democrat; Richard W. Irwin, Republican.
Five Republicans and seven Democrats.

The "Old Boy" evidently was rather fair, I should presume, because part of the time he was a Republican and part of the time he was a Democrat. [Laughter.]

David I. Walsh, Democrat, Governor during the years 1914 and 1915:
Appointments to Supreme Judicial Court: Edward P. Pierce, Republican; James B. Carroll, Democrat.

Appointments to Superior Court: William Hamilton, Republican; Christopher T. Callahan, Democrat; James B. Carroll, Democrat [Carroll was promoted, but I am counting him twice]; James H. Sisk, Democrat; Philip J. O'Connell, Democrat.

Two Republicans and five Democrats.

Samuel W. McCall, Republican, Governor during the years 1916, 1917 and 1918:

Appointments to Supreme Judicial Court: None.

Appointments to Superior Court: Webster Thayer, Republican; Franklin T. Hammond, Republican; Nelson T. Brown, Republican; Louis S. Cox, Republican; Charles E. Shattuck, Republican.

Five Republicans and no Democrats. [Applause.]

The whole case with reference to the judiciary in this State is contained in the record that I have just read. It shows that whoever is Governor, whichever party is in power, judicial appointments are viewed just the same as any other political patronage.

Where does this lead? The Republicans have shown unfortunately a narrow, petty, selfish attitude in the appointment of the judiciary. It is idle to say that they do not consider politics or political friendship. I venture to say that very few men ever are appointed to the judiciary, either in the higher courts or in the lower courts, without political backing. If the judges are not politicians they are the friends of politicians. We see how this example of selfishness controls in the government of cities.

The complaint is made sometimes that here in the city of Boston offices go entirely to Democrats. All too true, and solely because they have a big majority of the votes in the city. If they have been selfish, and if they continue to act in a selfish manner in the matter of filling appointments in the city, it is because those who controlled the city before they did acted that way, controlled everything, appointed nobody but party workers, nobody but members of the machine, nobody but those who were indorsed for active party work.

It is to provide against this that I have introduced this resolution which, in my opinion, takes the judiciary as far as possible out of politics, and puts it up to the members of the bar, puts the burden on them to be alert and vigilant in the selection of the judges for the several courts. If the bar will be active and vigilant, if the bar will indorse A over B as being more competent, more intellectual than B, the people, in my opinion, will take A over B. We shall have a better judiciary. In other words, the judiciary will be much more independent if selected by the people than if appointed on the indorsement of some political machine.

We sometimes hear the United States Supreme Court cited as an example of the fine operation of an appointed judiciary. Within our own generation we have seen that court pass on the income tax amendment, a judge changing from yes to no and deciding the matter by his vote. Latterly we see them defending and protecting, perhaps rightly, the Shoe Machinery Trust. But only the other day they had no mental processes that would permit them to protect the little child; — the little child who is more important to the country at this time in our crowded history than ever before, — no humanity, no mental processes, no sentiment, no imagination that would permit them to protect the little children of the country.

Now, my friends, some members of this Convention hesitate to talk about the judges, — they are a sanctified body. Let me tell you that they are very, very human. Any old member of the Legislature will

tell you that they come stalking through these halls lobbying for increases of salary, lobbying in a manner that would bring a blush to corporation lobbyists. And members of the bar, active in Suffolk County, will tell you that they importune the sheriff, importune the clerks of the courts, to appoint relatives to jobs. Imagine a judge upon the bench coming down and asking the sheriff to give a relative a job!

I am asking the members of the bar in this Convention, — a hundred and fifty strong, — I am asking them to take the judiciary out of politics. I am asking them to take the profession away from the dark abodes of politics. Let us go back to the ivory towers where the intellectuals dwell and from there send forth judges who will administer justice with an even hand. [Applause.]

Mr. Luce of Waltham: I am informed that yesterday my remarks about the gentleman from Boston who was absent (Mr. O'Connell) might be interpreted as impugning his veracity. Such was not my intention and I regret that my words could warrant the inference. Had the gentleman mentioned to me the fact that he was engaged in court I might have reminded him that the courts have given the work of the Convention the right of way. However, in the hope that if my words yesterday stirred up at all the spirit of controversy, the night may have allayed that spirit, I would suggest to those who are advocating these resolutions relating to the change in the judiciary that perhaps as practical men we may save the Convention delay and ourselves much inconvenience if we will take notice of the fact that the gentleman from Boston to whom I have referred has contemplated making his contest upon the second measure below this in the calendar, No. 115. If it is the case that a large body of opinion in this Convention favors a change in the method of the selection of the judiciary or their tenure of office, I should be the last to discourage debate upon the subject. But if, on the other hand, it is the case that no large body of sentiment favors that change, then perhaps the determination of the fact may facilitate our handling of the question. If we should at once reach what may be in effect a test vote upon this particular proposal, construing it as without prejudice to those that are to follow and thus in no way checking debate upon the main subject, we perhaps can all get illumination. And for that reason, let me repeat, without any prejudice to the matters that are to follow, but simply to ascertain whether the body of sentiment in favor of this proposal calls for further long discussion, I shall make presently the suitable motion.

Permit me first, however, to express a personal opinion that a great value of a Constitutional Convention is its educational value. We are all familiar with the fact that none of the proposals of the Convention of 1853 met immediate acceptance, but that many of them educated the people to the point of approving changes later on. And when I advocated the holding of this Convention it was with the hope that the discussion of public questions upon a high plane might contribute to the welfare of the Commonwealth. But circumstances have changed so wonderfully since then, so terribly changed, that now we find it necessary to forego discussion which is meant only for effect outside of these walls. Therefore it should be borne in mind that debate meant purely for the purpose of propaganda may not deserve or

demand now the time that otherwise we would with great profit give to it. There are measures later on in this calendar to which I would be glad to address myself in order that my arguments might go beyond these walls and might help perhaps to a clearer understanding of our problems. But under the circumstances may I not appeal to the common sense of the gentlemen to grant that we may not take the time now to advocate propositions which are certain not to receive the approval of the Convention, simply for the sake of educating opinion? Would we not better confine our time and effort to those proposals where we are nearly evenly balanced or where there is a decided preponderance of opinion in favor of action? In order, then, to ascertain whether a large majority of the Convention has decided what it desires in this matter of the tenure of the judges and to avoid if possible a prolonged debate, and without prejudice to the matters later on, purely in a spirit of amity, entirely for the purpose of aiding the Convention if possible, I move the previous question.

Mr. CARR of Hopkinton: I have listened to what the gentleman from Waltham has just said and I have talked with the gentleman from Boston (Mr. O'Connell) this morning. He called me up at my office and I reported what transpired yesterday, although he already had been informed, and I do not understand from what the gentleman from Waltham has said that it coincides with what the gentleman from Boston told me this morning. I understand the gentleman from Waltham as saying that the gentleman from Boston was concerned only about No. 115 on the calendar. I do not know who his authority is for that statement, but the gentleman from Boston has told me that he wished to be heard upon the Maguire proposal, or this No. 112 on the calendar. I do not want to cause delay in this Convention. I want to reach a conclusion just as quickly as any member of the Convention does, but I feel that the way this matter has been handled is not fair to the members of this Convention. There was a fair proposition for a postponement of these matters until next Tuesday. It could have gone over very well till next Tuesday. Then there would not have been any excuse for anybody not being here. But the attendance has not been any greater at the consideration of the question that preceded this, that we considered yesterday, in which the gentleman from Waltham says there might be more interest than there appears to be in this resolution. This question, I think, is probably as vital a question to a great many members of this Convention as any resolution in the calendar, and it very well might have happened then that this matter could have been postponed. Now there is not a quorum here this morning and I am going to raise the question of no quorum because I feel that the gentleman from Boston ought to be given an opportunity to be heard. It is not a question of the court's excusing him if he is engaged in the Convention. We know that the judges have been very considerate of the lawyer delegates who have had cases, but here is a delegate whose jury had been impaneled and he is obliged to go forward with his case. I do not know whether he is for the plaintiff or for the defendant. If he was for the defendant it would not have been fair to abandon him at that time. If he was for the plaintiff he had only about three or four or more days before the adjournment of the court and it might be possible that his client was crowding him for a trial. It seems to me only fair

that the member from Boston ought to have an opportunity to be heard on this particular resolution, which, in his opinion, may be the most important resolution on the judiciary or the only resolution on that question that he would stand for.

Mr. Herbert A. Kenny of Boston: I am sorry to hear the gentleman from Waltham move to restrict debate after the very good work on the part of the committee on Rules. It seems to me the committee on Rules have limited debate fairly. Now there is considerable discussion to be had on this question of the judiciary. My brother from Waltham said that the Convention of 1853 was really a campaign of education, and this Convention by discussion can provoke good thought if politics and log-rolling are laid aside; but the gentleman from Waltham in his artful way of getting rid of all judicial measures is using this subterfuge to side-track this debate. Therefore I trust that this Convention will not stifle speech by adopting the recommendation of the gentleman from Waltham.

Mr. Aylward of Cambridge: I sincerely trust that the previous question will not be ordered. I do not think that any of the reasons urged by the gentleman from Waltham will expedite progress on this matter, or the contention that the arguments that may be addressed to all similar measures may well be discussed during the consideration of this measure; and if this one is put out of the way now, as the gentleman assumes, because there is not much interest in it, it will not save any time. I do not know how much interest there is in this particular measure in this assembly, but I do know that there is great interest in it throughout the Commonwealth, and I think it would be a mistake to put it so that, by any snap vote or by any effort made on the part of those who believe there will be a smaller vote in favor of this than of some other measure, there would not be a free discussion.

Mr. Underhill of Somerville: I do not possess the diplomacy of the gentleman from Waltham, but I should like to bring to the attention of the delegates one or two facts regarding this matter. It was debated at length before, three whole days practically being given to a discussion of the question. The gentleman from Charlestown (Mr. James H. Brennan) had the matter recommitted in order that he might have an opportunity to express his opinions, which he did yesterday very ably, as he always does. The gentleman from Boston to whom reference has been made (Mr. O'Connell) has spread through the Convention, by mail, his remarks upon this feature of our work. Now, sir, if we are going to be courteous and kind and friendly and considerate of every man who would like to get into print, — and this is where I lack diplomacy, — who would like to get into print, you are going to sit here until Christmas again. If you had adopted my proposition not to print remarks verbatim, as I urged the Convention last year, you would have been out of here last winter. [Applause.] The time has come when the delegates should decide once and for all whether we are here in the public interest or whether we are here on our private political business. And I think that we might just as well drop the question of courtesy and kindness and all of that sort of thing and get right down to practical business. I trust that the previous question will prevail.

Mr. James H. Brennan of Boston: I am somewhat amazed at the action of this intended deliberative assembly in shutting off debate on

a momentous question before one word has been said in opposition to the enactment of this amendment. With this great assembly comprising 150 members of the bar, not one single, solitary, legal light has stood upon the floor of this Convention to give a sound, intelligent reason why this matter should not be enacted into our Constitution. We have heard imputations here that speeches have been made for the purpose of propaganda, — the statement made by the gentleman from Waltham. I do not know just what he means by propaganda, and possibly his own attitude may be also that of a gentleman speaking from the standpoint of propaganda, because, as I understand, he is a candidate for higher honors and those who are "in glass houses should not throw stones." The gentleman from Somerville, who impugns the intentions of those who favor this amendment, says that this matter had been debated for three days. I beg to differ with the gentleman. It was debated for thirty minutes. It was reconsidered after being rejected without debate, and I wish to correct the record so far as his assertion goes that this matter was debated for three days at the last session. I want to say to him that it is very unfair, that it is not legislative courtesy, to doubt the motives of any speaker on any matter in this chamber. And let me remind him and the gentleman from Waltham that all the purity and civic righteousness of Massachusetts' politics does not come from Waltham or from Somerville. [Applause.] And I deny their right to impugn the statements of any man on the floor of this Convention. I want only to ask that the layman statesman on the committee on Judiciary in charge of this report (Mr. Sullivan of Salem), who, by his splendid ability and talents, although a layman, occupies a position on the committee on the Judiciary, that he stand on his feet and defend the report of his committee and give to this intelligent body two reasons why this matter should not be enacted into our Constitution instead of putting on a gag rule to stop intelligent discussion. I come from one of the largest congressional districts in the United States and one of the most historic, and I say to you as a delegate from the 10th Congressional District of Boston that there is a sentiment in this Commonwealth for the direct election of all of our public officers.

Mr. McANARNEY of Quincy: I did not intend to say anything about this resolution, but I have been approached by members of the Convention and requested to state the position of the Judiciary Committee. That I will not do, because I shall leave that to the member of the Judiciary Committee in charge of this measure. But I do want to say this, that if for one moment I believed that in a Massachusetts Constitutional Convention with a membership of 155 lawyers the judiciary of this Commonwealth needed any man to rise in its defence, I would consider that fact alone sufficient to make one reflect and consider whether or not there was not something wrong, something which called for a change in the method of selecting the members of our judiciary. But it stands as a fact on the record of this Convention that not a man who has spoken here has made any attack upon our judiciary. Have you noticed that? Not one attack has been made upon the judiciary of this Commonwealth! The attack has been made upon the method by which they are selected. Am I not correct in my analysis of the arguments in support of this resolution? If, then, the attack is merely upon the method by which they

are selected, and no attack has been made, — because no man dares to make an attack, — upon the judiciary itself, because its record would refute it, is there not, then, in that fact a confession that our judiciary is above criticism and above attack? Can it be said of a method of creating a judiciary which has been in force for over a hundred years and where the men appointed to office under it have been above attack, that such a method of creating the judiciary ought to be changed?

Reference has been made here to other States. Let me give you as a complete summary of this question the conclusion arrived at in 1915 by an able committee of the New York City Bar Association. I will read to you just one sentence from the report, prepared by the committee, a committee consisting of some of the ablest lawyers in a State having an elective judiciary:

> Your committee is of opinion that the best and most practical method of securing learned, experienced, upright and impartial judges and of maintaining independence is by appointment and not by election.

Mr. Carr of Hopkinton: I hesitate to speak on this question in the five minutes that is allotted to me, as I did hope that the matter might be given opportunity to be more fully discussed. It may be that we shall have an opportunity of discussing this subject more fully on the resolutions that follow this one if the same policy is not adopted and the previous question moved before members are permitted to debate the resolutions that come up at that time. I am not going to attempt to pick out any member of the judiciary and say: "Here is a glaring example of inefficiency caused by partizan appointment, and for that reason we are advocating a change in the system." No man or set of men advocating this proposed change in our system is advocating it on any concrete instance of political appointment, as the last speaker might try to have you infer. That is not the motive that is prompting us to seek this change. We are prompted to do this because we wish to bring our judiciary nearer democracy, — to get nearer to our democratic ideals in the selection of our judges than we have been getting by the system that prevails in this Commonwealth and has prevailed so long. We are practically the only Commonwealth in the Nation that has an appointive system. I think there is only one other. The majority of the other States have the elective system of judges, and surely the decisions in those States which elect judges are fair examples of justice, and human rights have been protected equally as well as they have been in the Commonwealth of Massachusetts. I shall not attempt to criticize any individual judge for any decision he has given. But all you have to do is to review the appointments and examine the method that has been employed before the appointments have been made. I will give you in the form of a little fable a picture of the process of appointing judges in Massachusetts. There was once upon a time a man who had engaged in the practice of law, who had tried cases in the various courts of the Commonwealth and who had been appointed to positions of confidence and gained a reputation as a successful attorney, and was independent in politics. There came in his lifetime a vacancy in the office of judge in his judicial district; and this man, believing that possibly politics would not enter into the question, and aspiring to the office, became a candidate for judge in that district. He went among his fellow-

townsmen who knew him best and circulated a petition certifying that he was a competent man. He went among the attorneys who knew him and they indorsed his petition, and he went before the Governor of the State asking the appointment. After this gentleman's petition had been considered he was informed by the Governor of this Commonwealth whose name I shall not mention, or by the secretary of the Governor of this Commonwealth, that it would be necessary for him to remove the opposition of the leader of the party of which the Governor was a member. The applicant, who formerly had had belief in the Legislature, once had dared to oppose the Speaker of the House of Representatives on labor legislation, and he thus aroused the animosity of that Speaker. The message was conveyed to this aspirant to the office of judge and who had those indorsements of his fitness, that if he would see this man who was opposing him and get him to withdraw his hostility he would be appointed judge.

Now is not that a beautiful situation? Is not that a beautiful situation? I do not know whether other candidates for the office of judge are put on the grill as this poor fellow was, but those are facts, and those are the methods that are employed now in the appointment of judges. I ask you if it is not far better for this Commonwealth to follow the proposition laid down in the resolution offered by the gentleman from East Boston (Mr. Maguire) wherein he puts the election of our judges on a non-partizan basis. The candidate has to have certain qualifications by the amendment proposed in the resolution. He has to be of a certain age, a man learned in the law, and must go before the people as non-partizan.

Mr. Aylward: I well could have wished that this matter had been attended to in the last session of this Convention when the I. and R. was before us. I am satisfied that the people of this Commonwealth are interested vitally in this question as to whether or not judges shall be elected or appointed for a term of years, and I am satisfied whenever this question is put before the people that the present method will be repudiated by the people. It is not so much what some individual may or may not do; the difficulty is that it is almost impossible to remove judges. This is the only State in the Union in which that state of affairs exists. We have had occasions in the Commonwealth, — one I can remember within my time at the bar, — of a man occupying a position on the bench in this county, unfitted for years, who would not resign, who begged for a pension, and who was allowed to stay there because of the difficulty of removing him, because of that sympathy which would go out to an old man even though they could prove their case. This showed at that time that the system was an improper one. The gentleman from Quincy on my right (Mr. McAnarney) wants to know, and is surprised that members of this Convention have not made allegations against judges. What does he think the lawyers of this Convention are, — suicides? — to stand up here and make a personal allegation against judges, so that they may be "soaked" by those judges or their friends the next time they go into court? I do not think the lawyers of this Convention who oppose the present method are so unselfish as that.

I am not particularly interested in this proposed amendment, but I shall vote for it as a protest against the present method. I am more particularly interested in a later measure, namely, the proposal for appointment by the Governor for a term of years, which I believe

is a method that this State will come to finally. And if something is not put in or sent to the people from this Convention regarding the selection of judges I am satisfied, because of their inability to act under the I. and R., that there will be another Convention much sooner than this one was called. I am sorry that there is not further time to discuss this question. I am afraid that in view of the success of the opposition here in getting this previous question put through, a very short time may be permitted on the other proposals, because I can well understand that the conservative element in this Convention have lobbied pretty well and found out how many votes are for and against these measures. And if we are to judge by the experience of this measure I am afraid that debate may be cut off on the others, and I believe there are several members of this Convention representing large constituencies who wish to discuss them more fully than they have had the opportunity while this measure has been under discussion.

Mr. CURTIS of Revere: I want to ask the attention of this Convention but for a few minutes. For several seasons I have passed the winter months in Miami, Florida. I am well acquainted there, and I desire to relate a little incident that occurred, which bears upon this question.

There was a policeman in Miami who presented me a card on the street, asking me to vote for him as a judge of the municipal court. He had had no experience as a lawyer, and I was not entitled to vote there, but he did not know it; he thought I might be a resident. He was elected a judge, and I went to his court frequently, just as a place of amusement, and a good many other tourists would do the same. None of Gilbert and Sullivan's plays compared in amusement with the way that man administered justice. I simply say this as regards one case of the election of judges by the people.

Mr. SULLIVAN of Salem: I am sorry that I cannot see my way clear to gratify the desire of the gentleman from Charlestown (Mr. James H. Brennan) to hear me make a "regular speech," as he calls it. I have it all prepared here, and in writing, and if I thought it was necessary, or that it would change any votes, I would give it. I agree with the sentiments expressed by the gentleman from Somerville (Mr. Underhill) and am not anxious to see any speech of mine printed and circulated for posterity to read or for political effect. I think most of the men in this Convention have their minds made up as to how they shall vote on this measure. They have expressed themselves on this subject in many ways during the debate at the last session on the judiciary questions and the I. and R., and our Judiciary Committee are not going to try to make any defence of the Massachusetts judiciary as attacked in the debate on this measure, because it does not need any. In my opinion the best defence that the Massachusetts judiciary can have as regards the attacks made upon it during the present debate on this measure and the most eloquent and decisive speech that will be made in behalf of the judiciary of the Commonwealth will be the simple announcement of the presiding officer of what I know will be a large majority vote in favor of sustaining the report of the Judiciary Committee for the rejection of the measure. With that statement I am willing, as the member of the Judiciary Committee in charge of the adverse report, to have the measure go to a vote at this time.

The resolution was rejected, Friday, June 14, 1918, by a vote of 125 to 32.

Tenure of Judicial Officers.

Mr. William H. Sullivan of Boston presented the following resolution (No. 194):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

In order that the people may not suffer from the long continuance in place of any judicial officer, other than a justice of the peace, who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of judicial officers, other than justices of the peace shall expire and become void, in the term of ten years from their respective dates; and, upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well-being of the Commonwealth: *provided, nevertheless*, the Governor, with consent of the Council, may remove them upon the address of both Houses of the Legislature.

The committee on the Judiciary reported at the 1917 session that the resolution ought NOT to be adopted. It was considered by the Convention June 14, 1918.

Mr. William H. Sullivan of Boston moved that resolution No. 345 be substituted. This amendment was rejected, by a vote of 53 to 79.

The resolution (No. 194) was rejected June 14, as had been recommended by the committee on Judiciary.

THE DEBATE.

Mr. HERBERT A. KENNY of Boston: I certainly believe in the views of my friend and co-worker, Mr. Maguire of East Boston. I feel that my brother from Quincy (Mr. McAnarney) will have to seriously apologize to the people of Quincy when he gets back, for his conduct here. It seems to me that my brother from Quincy has joined the Conservative Club that runs this Convention, and the "high-brows" have got him. No more serious subject bothered the minds of the Convention of 1853 than this present subject of the tenure and the election of judges. When the Union of States was formed by the adoption of the Federal Constitution the principle of popular election was applied to government more than ever before in human history. It was applied to the legislative department; it was applied to the executive department; but it was withheld from the judicial department because of the fears of Alexander Hamilton, who felt that imperialism already had conceded to democracy too much and could concede no more.

His influence made the judges of the Federal government independent of the people by giving to the chief executive the right to appoint them, a system analogous to that advocated by our opponents who would give to the chief executive of the State the right to appoint the judges of the State.

Of the Federal system as now practiced in this State, we say that it was obnoxious to Thomas Jefferson, whose theory of government has found favor with the succeeding generations while the imperialism of Hamilton has been discountenanced. And it has proven very obnoxious to the people at large, as a summary of the judicial systems now employed by the various States will show plainly. For in spite of the many excellencies in the Federal system and in spite of the fact that it commonly is held up as a model in all things govern-

mental, forty-two of the States of the Union have seen fit to depart from the Federal usage of selecting their judges.

The doctrine of Jefferson is fast getting control. Jefferson regularly expressed the fear that the courts of the United States were attempting to break down the constitutional barriers between the coördinate powers of the State and the Union.

The first ground on which we oppose this system is its inconsistency. We live under a democratic form of government. We elect Legislatures and delegate to them the making of laws, and why shall we not elect the judges to whom is delegated the business of interpreting those laws?

If it is right to apply the principle of popular election to the executive department and the legislative department, on what ground do we discriminate against the coördinate department of justice? It is only when we look deeper into the nature and powers of this department that we can explain this inconsistency. What relation does the judicial department bear to the legislative and the executive departments? The three are coördinate in name and in fact, they cannot destroy each other, but in some respects the judicial department is supreme.

The executive department exercises a limited control over the legislative by reason of the Governor's power of vetoing legislation, but that veto may be overridden by sufficient majority of the Legislature.

But the Supreme Judicial Court exercises a final and unquestionable authority over legislation; the Supreme Judicial Court can annul an act, not only on the ground that it violates the express provision and clear implication of the Constitution, but even on the ground that it is not in harmony with the spirit of the Constitution.

Another argument in favor of the existing system is that the people are not as well qualified to elect their judges as are the Governor and the Council to appoint them. There is not the slightest evidence tending to prove the truth of this assertion, and it is a direct insult to the intelligence of the citizens of the Commonwealth. There is no reason for thinking that they are not as able to choose the judges as they are to choose the other officers of the government.

It is an insult to any judge to intimate that he can be deterred from the proper performance of his official duties in the manner suggested; and it is also a serious reflection upon the character of the people to say that they ever will be guilty of thus interfering with the administration of justice. If there is any force in the argument it can be applied with the same reason to the other officers of the government, such as the district attorney.

The doctrine of the independence of the judiciary assumes that just in proportion as judges are rendered independent of the people will they become impartial and just in their decisions. So far from this being true, eminent publicists contend that this independence has precisely the opposite effect upon them. Such is human nature that the possession of unlimited power, like that which is exercised by our courts in certain matters, coupled with the absence of responsibility to the people for its proper exercise, tends to render the judges arbitrary and unjust in their rulings and decisions. They know full well that their positions are secured to them for life, — the provisions of the Constitution in regard to their impeachment and removal from office by address being wholly inoperative. For however much the

people may suffer from the unjust acts of the judges there is little prospect of success in any effort which may be made to remove them from office so long as their conduct is not positively criminal.

The sins of the Judiciary Committee are not sins of commission but omission. Governor McCall in his opening words to this Convention said the fact that it was war time would give us a keener perception. Have we used it? Has the shadow of war thrown over our deliberations dispelled the ordinary legislative atmosphere? Is not every measure fitted to the Procrustes bed of the Legislature? For what purpose was this Convention called if it were not to satisfy the social unrest so apparent, to ameliorate, if not cure, the hardships and defects of our social fabric? Are we giving the thought to this epoch-making Convention that we should? Is not sound more popular than sense? Are we dealing with questions in the cold academic analysis which reason dictates, or do our personal and business relations unconsciously enter into our judgments?

Mr. William H. Sullivan of Boston moved that the resolution be amended by substituting a new draft (No. 345).

Mr. Sullivan: After a career of over a quarter of a century in the courts, and a very pleasant experience, I am not here to criticize the judges, who in the main have been very kind to me; and if I were inclined to criticize the judiciary, the recent appointment of one of our members, the gentleman from Lancaster, to the lowest court, and the appointment of a very human district attorney in Essex County, a brother of another member, to the Superior Court, would deter me from any very harsh criticism. But feeling that perhaps twenty-five years' active practice in the courts might qualify me as an expert, I am encouraged to discuss this question somewhat briefly, and to appeal to you hopefully to submit to the people this amendment to permit the appointment of judges for a term of years.

Were it not for the fact that this first debate has terminated so disastrously for the friends of the people, there would be greater reason to believe that some of our more exclusive members would listen seriously to a discussion of the limited tenure of judges. I talked with one of the greatest admirers of our judiciary, and he said that if he had not taken such a firm position in the committee on the Judiciary he would be in favor of limited tenure of judges.

What purpose does the judge serve? The judge is appointed to dispense justice, courteously, impartially and wisely, to guarantee the security of the life and liberty, the reputation and property, of the people; and yet this man, who is appointed to render such service to the people, is beyond the reach of the people.

How is the judge appointed? After carefully considering him geographically, socially and politically. What is the history of the recent or up-to-date appointments? Serving on the Judiciary Committee of the Legislature, one beholds the secretary of the Bar Association (who has been in constant attendance at this Convention) leading by the hand some prospective candidate for a judicial appointment; and this candidate becomes effusive over everything the Bar Association desires. Ergo he is in line for an appointment. Now, our friend from East Boston gave a list of the recent judicial appointments by the present Governor, seven judges, — all Republicans, — two of said

judges being appointed to the Suffolk Probate Court, where Arthur Dolan, Register of Probate for years, entitled to the promotion as established by custom and especially fitted for the appointment, was not appointed because he was a Democrat. Twice was this judicial appointment withheld from the man best fitted for it that a Republican Governor might strengthen his political fences by means of a partizan appointment to the judiciary. That is your politics.

As to the geographical consideration: Suppose that there is a vacancy in the Superior Court; it is the turn of Plymouth County to have a judge; and so some lawyers, practicing in the lower court, who, every one of them, are anxious to become a successor to the judge of that court, peddle about a petition to promote the present incumbent in order that they may succeed him. What eminent fitness! That, briefly, is the history of the appointment.

After the judge is appointed he becomes free and independent, according to our self-appointed spokesmen. "Free and independent, and let us keep him so," they say. How free is he? The poor judge cannot talk with an exclusive lawyer for the New York, New Haven and Hartford Railroad Company but we, less fortunate, conclude that he is being "contaminated," or that he is unduly friendly with this legal aristocrat. On the other hand, if he is a man from the plain people, appointed by Governor Foss, then the legal aristocrat suspects that the judge is too close to the plain people when he listens to a funny story from me. The poor judge cannot eat at a public restaurant, although of late he is seen there; he must eat at the University Club, where there is a sanctified atmosphere, and where he comes in contact with our legal aristocrats who mainly represent corporations.

Free and independent! I wonder if they appreciate, these legal aristocrats, what that utterance means when they defend the judges. I am not going to attack the judges, only to say this, that, if all the judges were to seek reappointment, Judges King and Raymond are the only incumbents of the Superior Court who would not be considered for reappointment.

Free and independent judges, — and their friends and defenders say: "Let us keep them free and independent and not make them subject to the whim of reappointment." What does that mean? What would tend to make a judge free and independent? Does a judge become free and independent when he is assured that he cannot lose his salary, that he cannot lose his pension, that he cannot lose his position? The defenders of the judges say: "Consider the personality of the different judges and do not affect their independence, do not render them less free and independent, because if they are not assured of their salaries and pensions and positions, they will be susceptible to unworthy considerations and will not be so good nor will they remain honest." I think that such an argument is an insult to the judges. I know if I was a judge, — and I know it is true of the judges with whom I am intimate, — I gladly would go before the people. I remember attending a banquet to Judge Keating, an ideal judge, a man for whom I have great admiration and respect, and that is the reason I attended the banquet. It was attended also by our legal luminaries, the professional orators of the Bar Association. I generally refrain from attending these functions because I must

listen to the drivel of this mutual admiration society when I go; but because of my warm friendship for Judge Keating I went. Judge Hammond of the Supreme Judicial Court stood before us and pathetically asked the lawyers present to express honestly their opinion of the judges, and he said: "We are aloof from the people," and he was a pathetic and tragic figure. I sympathized with him then, I sympathize with him now, and it is because of my sympathy for a real judge that I am advocating this limited tenure.

Judge Hammond said: "Please tell us what you think about us; we are aloof from you, we cannot mix with the people as we would like to, we would be misunderstood." And the friendly Bar Association orators told what they thought of him, while the only friend of the plain people present was restrained from disturbing the harmony of the occasion. [Laughter.]

Now, the judges want to know what the people think of them, and the more human and better a judge is the more he wishes to know it. Judge Aiken is the Chief Justice of the Superior Court. I question if he is the best lawyer on that bench, but he fills that position better than any man who ever held that position. Judge Aiken and Governor Foss have done more to inspire confidence in the judiciary among plainer members of the bar and the plain people than Chief Justice Shaw and all the other great jurists who ever lived in this Commonwealth. Judge Aiken is essentially human, — a courteous, merciful judge, to whom anybody and everybody can go and be assured of fair treatment. Judges approaching this standard were appointed by Governor Foss, and perhaps the only purpose my address will serve is to pay a little tribute to Governor Foss. Politicians may laugh at him as they will, they may say he is here to-day and there to-morrow politically; but Governor Foss appointed to the judiciary men of the Catholic faith when it required great courage, physical and moral, to do it, and gave representation on the bench to a large portion of our people. Governor Foss, whatever his political future may be, always will live in loving remembrance in the hearts of many people who appreciate what physical and moral courage mean in public life. So if my remarks serve no other purpose, I am enabled thereby to give expression to the gratitude, affection and admiration I feel for the Governor, who no longer can render us a service, who no longer can appoint anybody to office, a realization of which makes my words entirely disinterested.

Are the judges free and independent and beyond the reach of sordid temptations? Serve in the Legislature and you will be disillusioned speedily. Every year a raise in salary or an increase in pension is pressed, pushed and lobbied for. I presented a resolution to this Convention which provided that when a judge takes the office his salary shall not be increased during his tenure. Is not that a fair proposition? A judge makes a contract with the Commonwealth to serve for the salary paid at the beginning of his term and should not be encouraged to seek a larger compensation, for it leads to unfortunate complications. Come to the Legislature and vote against this salary increase, as I did, and your experience may be similar to mine. The judge had been advised from day to day as to the progress of the bill to increase his salary and had been given the names of its opponents; he recognized me so readily every time I appeared before

him that I never had a chance to win, and was compelled to refuse all cases coming before him.

Free and independent! Serve in the Legislature here and have the judges, or their representatives, come lobbying to you and asking you to vote for an increase in pension or an increase in salary, when you would like to save the Commonwealth the expenditure, and see what treatment you will get from some of them!

The judges are not the aggressors. Some astute friend and lobbyist suggests to the judge that if his salary is increased a thousand dollars a year he (the lobbyist) will take the first year's increase. That is the way in which salaries sometimes are increased for the free and independent judges. I now state emphatically that this criticism of salary increases does not apply or refer to the judges of the Supreme Judicial or Superior Courts.

Listen to the argument of the defenders of the judges as they present it to you. They say: "Let us not shatter or impair the legal efficiency and ability and honesty of the judges by making them solicitous for their salary or their position; some are weak and infirm, some are susceptible to peculiar and sordid influences, so do not let us tempt them. We know they are human and fallible; let us not tempt them."

How can you make a good judge any better by offering him money or security of position? How can you make a bad man good enough for a judge by these material inducements? As I have said, there are only the two men whom I have mentioned, judges in the Superior Court, who would not receive indorsement from every thoughtful and conscientious lawyer for reappointment.

Here are the two pictures. Under the present system of life tenure, a man of whom our estimate is that he is most ordinary in his legal attainments is selected, and because some Governor, who is himself only human and sometimes very ordinary, selects him from a number of candidates, he becomes deified and lifted far above the people. Here is the picture under the life tenure, — a judge deified by the Governor, beyond the reach of the people. Our government is founded upon the public will as exemplified by the election of the executive and the legislative branches for a year, but the judge is selected for life, free and independent of the people.

I am attacking the system. It is undemocratic to have any man appointed for life. Go with me to the court, try a case for days for some poor man or woman who has waited for two or three years for his day in court, and then some smooth, slick and well-groomed attorney for the corporation asks that a verdict be directed for the defendant; you look into the face of that judge, who is known to be unfriendly to the plain people, who you feel is going to direct a verdict for the defendant, because the corporation is powerful, and financially able to take the case to the Supreme Judicial Court. The judge reflects: "The corporation will appeal from my ruling to the Supreme Judicial Court, this plaintiff is too poor to do so," therefore he directs a verdict for the defendant, — and it is the judge especially who should be vigilant to do justice to the poor man. The law of exceptions favors the corporation. The corporation takes the case to the Supreme Judicial Court, the Supreme Judicial Court sustains the exceptions, and directs a verdict for the defendant. In the other view,

if the plaintiff's exceptions are sustained, he must go back and try over again in the Superior Court, after years of waiting. If such a judge had to come before a Governor for reappointment, and specific instances of unfairness and incompetency could be argued against him, it would afford some satisfaction and be somewhat of a deterrent even if the Governor reappointed him.

Now, you have this deified official, floating in this rarified atmosphere of falsehood and flattery, lifted above the people by the æsthetic potency of the powerful friends of the corporations and the cultured habitués of the University Club; and he floats in this rarified atmosphere, looking down condescendingly upon the people, one eye cast lovingly upon his makers, the other eye on the pay-roll or pension roll in the hands of those who are all powerful. That is a picture of your judge to-day.

But to me, under the new system, we would have a different picture. We would have a real man, not the inflated figure of a man floating in an unhealthy atmosphere. You would have a real man, with his feet on the ground, walking among his people, looking them fearlessly in the face, actually free and independent. Why? Because he knows his position is founded upon the good will and the confidence of the people. And I care not how good or how able a judge is, if he have not the confidence of the people then he is useless to the judiciary and to the Commonwealth.

So let the new system prevail, let this real man walk about among his people. Let him know that his position is founded upon public confidence, not upon individual favoritism; and such a man will dissipate this present-day discontent with our judges, will inspire confidence in the courts, and will engender in the people a loyal affection and an abiding faith in the judiciary of Massachusetts.

Mr. Carr of Hopkinton: If I heard the gentleman from Waltham (Mr. Luce) aright in the early part of the day, he said there was some measure he was going to ask the Convention to delay action upon until the gentleman from Boston (Mr. O'Connell) was able to be here to be heard upon it, and I understood that it was this particular measure that the gentleman from Waltham said that the gentleman from Boston had in some way intimated to him he wished to be heard upon. If that is the fact I should like to have the gentleman from Waltham state to the Convention what particular measure, what particular one of these resolutions, he has in mind to ask the Convention to delay action upon, or whether it is this one.

Mr. Luce of Waltham: The gentleman from Hopkinton misunderstood me in the matter. I did inform the Convention that the gentleman from Boston in question (Mr. O'Connell) had told me that it was his intention to center debate on No. 115 on the calendar. I called the attention of the Convention to the fact that if there developed a considerable body of support for the proposition that the tenure or method of appointment of the judges should be changed, then it might very well seem wise to the Convention to prolong the debate, but I gave no intimation at all of my own intention to make any further motion in the matter.

Mr. Carr: I might call the attention of the gentleman from Waltham (Mr. Luce), as to this particular resolution that we are now discussing, that the gentleman from Boston in the fourth division (Mr.

W. H. Sullivan) had moved to substitute No. 115, or document No. 345, for the question under consideration now; so that No. 115, or document No. 345, really is under discussion at the present time, although I suppose that finally No. 115 will come in the usual course if the calendar is not rushed through this afternoon and those matters disposed of.

Now, in all fairness I do feel that these matters ought not to be disposed of this afternoon, especially with the slim attendance that we are having here, and that the gentleman from Boston (Mr. O'Connell) should be given the opportunity to be heard that he so ardently has desired and such a large number of members here wish to give him.

Mr. McLaud of Greenfield: I dislike very much to see this disposed of in this way. I consistently voted against any change whatsoever in the judiciary, both last year and this year, and the probabilities are that I shall continue so to vote; but I do believe that this particular measure which is now under discussion for substitution has above all others some merit. I do think that it should be discussed properly. I do think that the most able exponent of any change is the ex-Congressman, the gentleman from Boston, and I think it is absolutely unfair to take any such advantage of him at this time. I hope that by some method this matter can be postponed until he can be present and speak upon it. It is through no fault of his own that he is not here.

Mr. Mancovitz of Boston: I regret very much that the gentleman who offered the substitute is not present in the chamber to discuss it. No doubt there is a feeling in the Commonwealth, and there is a feeling among many of the delegates in the Convention, that a change in our present judicial system ought to take place. Some of the delegates believe that the most democratic change should take place, to wit, the election of judges. Others believe that the tenure of the judges should be limited, while others believe that the present system should continue and ought not to be disturbed. Thus we are confronted with three propositions. I believe that a common level can be arrived at whereby the present judges will be allowed to hold their commissions and yet bring about a wholesome change in the present system.

I have had the honor of being a member of the General Court of the Commonwealth for four years, and have practiced law in this Commonwealth for eighteen years. During my services in the Legislature, a Chief Justice of one of our courts appealed to me to assist him in ridding his bench of two of his associates. The reason of his desire to obtain the retirement of the two associates was that both men were physically unfit to perform their duties to the public. One of these judges was so deaf that he could not hear the parties and the witnesses who appeared before him, and the other judge was so old that he could not keep awake while sitting on the bench. Thus the people of the great city of Boston who resorted to the courts for justice were obliged to suffer that condition for a number of years, as there was no way under the present Constitution to retire these two judges except by impeachment or an address by the General Court, and no one desired to remove these two judges by the method provided by the Constitution, and thus we were obliged to resort to a subterfuge by retiring these two judges on a pension.

Another striking example occurred in our Probate Court for Suffolk

County, where the judge, who was in his second childhood, would not retire, although he had passed his eightieth birthday, until he received first an increase in salary and then a pension of three-fourths of the salary as increased.

Is it fair to the people of this Commonwealth to keep men on the bench until they go to their graves, regardless of whether they can perform their duties properly or not? It is my firm opinion that this Convention ought to do something to permit the people of the Commonwealth to say whether or not the present system should be changed.

The resolution offered as a substitute leaves the Supreme Judicial Court as it is to-day, allowing the Justices to hold their offices during good behavior, for the reason that the Supreme Judicial Court does not come in contact with the people as much as the Superior Court and other inferior courts. But the trial judges, who come in close touch with the people, should be obliged to account to the people at certain reasonable periods for their conduct and the people should be in a position to retire the trial judge when he proves to be unsatisfactory either through incompetency or old age.

It was regrettable to hear the distinguished gentleman from Quincy (Mr. McAnarney) take the floor in the Convention and wave the red flag in the faces of members of this Convention who are members of the bar and who have the courage to take the floor and present the true facts concerning our present judiciary system. I want to say to him that if he insists upon his charges I shall name judges of our Superior Court who, to my mind, are unfit to occupy a seat upon the bench by lack of judicial temperament, training, ability or experience. I shall ask him if he ever heard of at least one judge in our great Superior Court who had acquired the reputation of holding one of the sessions of that court which was named the Plaintiff's Graveyard, and if he believes a judge who brings about that condition in our courts is wholesome.

It became necessary for the General Court to take action, and legislation was introduced tending to prohibit by law a judge from holding a session in one county for the entire year. The Chief Justice of that court came forward and promised to correct the system, and the General Court abandoned its proposed legislation.

Further, I should like to ask him if a judge is competent to do justice who, while sitting on the bench, will ask a witness before him what his religious views are. Judges of that type exist nowhere except under the Massachusetts system. This is the only State that has such a system in this great country of ours. Yet he asks: "Has any one said a word against the personnel of the judiciary?"

I will tell the gentleman of an experience I had in one of our courts not very long ago, when the judge on the bench, in the trial of a criminal cause, said in open court that he was not concerned or interested in or cared for the rights of the defendant, that he was going to do what he could to keep the city clean and pure; if people wanted their rights, his court was not the place where they could invoke their constitutional rights of appeal. Do the people of this Commonwealth want men of that type on their bench? I believe they do not.

The trouble with the judges under the Massachusetts system is this: When a judge receives his commission and takes his seat on the bench, he begins to crawl into his shell and stays there for the rest of his

natural life. He does not mingle with the common people, he gets away from the live subjects of the day. The man who leads a narrow life acquires a narrow viewpoint and cannot judge character and human nature, neither can he judge where the truth lies. I believe the time has come in this Commonwealth when a change ought to take place and I believe the amendment contained in document No. 345 is a fair and proper solution of the cause.

In answer to the contention that in appointing a judge for a definite term of years, it will prevent the ablest of the legal profession from accepting the appointment, for the reason that having accepted the commission he will lose his practice and at the end of his term will be thrown out of office and obliged to start anew, and therefore will be at a disadvantage, I believe that objection can be taken care of and should not be considered.

I believe in giving judges a salary of $15,000 to $20,000 a year, so that the best of the profession can be drawn and attracted to the bench. I do not believe you can get a $20,000 man for $8,000, and therefore urge that the Convention permit the substitution of the resolution offered in document No. 345.

Mr. KILBON of Springfield: Before this vote is taken may I make a suggestion? It seems to me a great pity that this matter should go on without adequate debate on both sides. As one whose mind is somewhat open on the question, I desire to hear a more adequate presentation of at least the other side of the matter than has been made. My hope is that such a presentation may come to us if this substitution is refused and thereby the way laid open for a renewal of the proposition under No. 115. Am I right, Mr. President, in my judgment of the procedure that is possible?

The PRESIDING OFFICER: The Chair will state that if the Convention votes to substitute it does not close debate. The question of rejection is still before the Convention and the debate may proceed.

The amendment moved by Mr. William H. Sullivan was rejected, by a vote of 53 to 79.

The resolution (No. 194) was rejected June 14, 1918.

Mr. David Mancovitz of Boston presented the following resolution (No. 193):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

The Justices of the Supreme Judicial Court shall, with the advice and consent of the Council, be appointed by the Governor for a term of ten years, and the Justices of such inferior courts as are or may be established by law, for a term of seven years, said Justices to be eligible to reappointment, but in no case to continue in office after attaining sixty-five years of age.

The committee on the Judiciary reported that the resolution ought NOT to be adopted.

It was considered by the Convention Friday, June 14, 1918.

Mr. Mancovitz moved that the resolution be amended by substituting the following new draft (No. 345):

Resolved, That it is expedient to amend the Constitution by inserting the following:

All judicial officers duly appointed, commissioned and sworn, of the Superior Court, Land Court, or courts hereafter created in their stead, shall hold their offices for the term of ten years, and all other judicial officers of any inferior court now or hereafter existing, shall hold their offices for the term of seven years. And upon the expiration of such term they may be reappointed. They should have honorable salaries established by standing laws, which shall not be increased or diminished during the term for which the judicial officer is chosen. The present judicial officers shall hold their offices according to their respective commissions; but hereafter when any vacancy shall occur excepting in the Supreme Judicial Court it shall be filled by appointment for a term as herein provided, but in no event to continue in office after attaining sixty-five years of age, excepting judges of the Supreme Judicial Courts, who shall not continue after attaining seventy years of age. No person shall be appointed a judge who shall not have attained the age of thirty-five years, and have been ten years a citizen of this Commonwealth, and been admitted as an attorney for ten years.

No person shall be appointed a judge in any of said inferior courts unless at the time of his appointment he is a resident and qualified voter within the venue of said court, and his commission shall expire upon his removal from the venue of said court.

Mr. Frederick L. Anderson of Newton moved that the above proposed substitute draft (No. 345) be amended by striking out lines 3 to 28, inclusive, and inserting in place thereof the following paragraph:

The Legislature shall have the power to establish an age for the compulsory retirement of judges.

This amendment was rejected.

Mr. Paul R. Blackmur of Quincy moved that the proposed substitute draft (No. 345) be amended by striking out lines 3 to 28, inclusive, and inserting in place thereof the following paragraph:

The Governor, by and with the consent of the Council, may retire any judicial officer because of advanced age, mental or physical incapacity.

This amendment was modified, on motion of Mr. Edwin U. Curtis of Boston, by adding at the end thereof the words ", and the General Court may provide pensions for judges so retired".

The amendment as thus modified was adopted, by a vote of 107 to 69.

The new draft proposed by Mr. Mancovitz as thus amended was adopted. The resolution as amended was ordered to a second reading as follows (see No. 380):

Resolved, That it is expedient to amend the Constitution by inserting the following

ARTICLE OF AMENDMENT.

The Governor, by and with the consent of the Council, may retire any judicial officer because of advanced age, mental or physical incapacity, and the General Court may provide pensions for judges so retired.

This resolution was read a second time Thursday, July 25, 1918.

Mr. David Mancovitz of Boston moved that the resolution (No. 380) be amended by inserting after the word "Council,", in line 3, the words "shall appoint all justices of the police, district and municipal courts, or such other courts as the Legislature may establish in their place, for a term of seven years, and".

This amendment was rejected, by a vote of 42 to 99.

Mr. Joseph F. O'Connell of Boston moved that the resolution (No. 380) be amended by inserting after the word "age", in line 4, the word "unfitness,"; and by striking out lines 3 to 6, inclusive, and inserting in place thereof the follow-

ing: "All judicial officers shall be nominated and appointed by the Governor, by or with the consent of the Council, for a term of ten years; and they may be reappointed at the expiration of such term."

The amendment in line 4 was rejected, by a call of the yeas and nays, by a vote of 94 to 96.

The other amendment moved by Mr. O'Connell was rejected, by a vote of 38 to 104.

Mr. Fred H. Williams of Brookline moved that the resolution be amended by inserting after the word "may", in line 4, the words ", on due notice and hearing,".

This amendment was adopted.

Mr. Paul R. Blackmur of Quincy moved that the resolution be amended by substituting the following new draft:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment.

Article I of chapter III of part II of the Constitution is hereby amended by the addition of the following words: and provided also that the Governor, with the consent of the Council, may after due notice and hearing retire them because of advanced age or mental or physical disability. The General Court may provide pensions for judges so retired.

Mr. Samuel W. George of Haverhill moved that the new draft be amended by striking out, at the end thereof, the words " The General Court may provide pensions for judges so retired.", and inserting in place thereof the words ", upon the terms and conditions that may be provided by law for the voluntary retirement of judicial officers".

This amendment was adopted, by a vote of 71 to 58.

The amendment moved by Mr. Blackmur, as thus amended, was adopted and, accordingly, the new draft, as amended, was substituted; and it was ordered to a third reading Thursday, July 25.

The resolution, as changed by the committee on Form and Phraseology, was read a third time Tuesday, August 6, as follows (No. 413):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment: —

ARTICLE OF AMENDMENT.

Article I of Chapter III of Part II of the Constitution is hereby amended by the addition of the following words: — and provided also that the Governor, with the consent of the Council, may after due notice and hearing retire them because of advanced age or mental or physical disability. Such retirement shall be subject to any provisions made by law as to pensions or allowances payable to such officers upon their voluntary retirement.

Mr. James E. Maguire of Boston moved that the resolution be amended by adding at the end thereof the words:

And provided further that the Governor by and with the consent of the Council may remove any judge for incompetence in the discharge of his official duties after giving him an opportunity of being heard and of being represented by counsel in his own defence.

This amendment was rejected, by a vote of 26 to 103.

The same gentleman moved that the resolution be amended by adding at the end thereof the following paragraph:

The judges of the Supreme Court and the Superior Court and the probate courts and the land courts and the district courts and the police courts shall be elected by

the people for a term of seven years. The names of the candidates for judges of the aforesaid courts shall be placed upon the ballot at the regular State elections in alphabetical order without party or other designations except the title of the office. The General Court shall determine the qualifications of said candidates as to age, experience and length of membership at the bar.

This amendment was rejected.

Mr. Joseph F. O'Connell of Boston moved that the resolution be amended by inserting after the word "age", in line 8, the word ", unfitness".

This amendment was rejected, by a call of the yeas and nays, by a vote of 80 to 119.

The resolution (No. 413) was passed to be engrossed Tuesday, August 6.

The Convention voted Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 156,796 to 86,023.

THE DEBATE.

Mr. MANCOVITZ of Boston: I have been informed by a number of delegates to the Convention that there is considerable sentiment in the Convention for document No. 345, or for the principles stated in that resolution. A number of men since the morning session have expressed a feeling and desire to make some change in our present system, but they were a little timid in substituting that for the other resolution because that affected the Supreme Judicial Court. Document No. 345 does not affect the Supreme Judicial Court in any way. I will ask the members to turn to document No. 345 and read it for themselves. It provides that —

> All judicial officers duly appointed, commissioned and sworn, of the Superior Court, Land Court, or courts hereafter created in their stead, shall hold their offices for the term of ten years, and all other judicial officers of any inferior court now or hereafter existing, shall hold their offices for the term of seven years. And upon the expiration of such term they may be reappointed.

A further provision in the resolution provides that their salaries may be neither reduced nor increased during their term. There is a further provision that the several Justices of the various courts are to continue in office until they either retire voluntarily, retire upon a pension or retire from natural causes. It seems to me with those safeguards for our highest courts and with the protection of the present incumbents that there ought to be serious consideration given to a question which, at the present time or in the near future, is going to confront the people of this Commonwealth. We have heard this afternoon a gentleman who is a member of this Convention in this division, who represents the labor element (Mr. Dennis D. Driscoll of Boston), and he told you how the labor element of our great Commonwealth feel upon the question of the judiciary. Men of liberal thought cannot conceive of one branch of our government holding office for a lifetime. Continuancy in office for a lifetime tends to arrogancy, and we want to avoid that especially in the courts that come in contact with the people daily.

We further restrict and safeguard the bench by providing that no man shall be appointed to the bench unless he is of mature years, the age of thirty-five, and that he has practiced as a member of the legal profession for at least ten years and has been a citizen of the Commonwealth for at least ten years. The men who believe that a change

ought to take place in our system are willing to go a great way to assure the people of the Commonwealth that they shall get proper and capable men to fill those positions. The laymen cannot conceive or understand the condition of our courts and they cannot understand perhaps why there is such a divergency of opinion among the lawyers. But the legal profession, as well as the laymen, have their various circles or strata of society. The men who are more fortunate and more familiar with members of the bench no doubt have a friendly feeling toward them, while the men in other social standing, in the lower strata of life, have different views, and we never can get a large number of members of the bar to agree, because that is not their business. They are trained to disagree, and you should disregard their opinion, in this discussion, but let the laymen come in here and discuss this question. I believe their judgment on this question will be far more important to the people of the Commonwealth than that of the lawyers, of which profession I am a member. There is a serious unrest in this Commonwealth at the present time in regard to continuing or permitting one branch of our government to hold office for a lifetime. I have heard gentlemen in the Convention tell me there ought to be some restriction put upon the tenure, at least as to retirement; that when men reach the age of seventy or sixty-five, they ought to be compelled to retire. There is no proposition before the body at the present time to bring that question up; but if you substitute this resolution No. 345 for the report of the committee, we can then so amend it as to meet all the objections or all the things desired to be accomplished. I hope this Convention will give this a serious and fair discussion with a view to improving upon our present system. I do not say that the present system is an unjust system; I do not attack the personnel of the various benches. I believe the majority, the greater number of men, are honest, able and capable men. But, gentlemen, we are here for the purpose of improving our form of government and we ought to attempt to improve this particular branch of the government. It is over a hundred years since the system was adopted and there has not been a single change. Who of us here to-day would consider appointing our other officers, — district attorneys, clerks of the courts, county commissioners or other semi-judicial bodies, — to a life tenure? No one. No doubt it will be argued that the system has worked well and we ought to continue to hold it. I want to call to the attention of the Convention that in recent years we have established a quasi-judicial body known as the Industrial Accident Board, which has upon its membership seven men, two lawyers and five laymen. The litigants who appear before that board, that is, the insurance companies and the employees, would not permit a change in that body to a life tenure, because the men who appear before the board are treated fairly. The men who serve upon that board are taken from every walk of life and the term of a member is three years; they do justice to all parties, and when the term of any member of the board expires you will find both the insurance company attorneys and the attorneys for the labor element coming before the Governor and urging the member's reappointment because that man has proven worthy and honorable in his position. Keeping that in mind is it not fair to presume that if a change is made in our Superior Court and in our inferior courts a similar condition will exist? A judge who knows that at some time in his

career he must give an account to the people or to the source from which he derives his power will be more cautious in treating parties before him. There are some judges in our courts to-day who disregard the rights of litigants. It is unfortunate, but human nature is not infallible. Men who hold office securely for life become arrogant and disregard the rights of litigants. We want to remedy that and prevent it, and we want to consider that phase of the question when we vote upon this resolution. I hope substitution will prevail.

Mr. HARRIMAN of New Bedford: I shall not attempt at this time to occupy the time of this Convention at length upon this subject. It affects the welfare of the Commonwealth, it is inseparably linked with injunctions and the power which the courts have taken unto themselves to annul acts of legislation passed by the representatives of the people. To the lawyers in this Convention, to you men who believe that the law as it is administered is right, that there can be no improvement in it, let me say that you do not mix with, and you do not know, — if you did you would not hold that opinion, — the thoughts and the opinions of the thousands of men and women who are affected by the rules and judicial decisions of our courts. We have no fault to find with the courts as they act between man and man; but when they enter into the fundamental life of the community we are interested and it is vital to the welfare of the working-class of this Commonwealth. To you men who do not dare to go the whole distance, to you men who shut your eyes and verily stand upon the wall, as Nero did, and fiddle while the city burns, let me say to you, the best thing you can do to-day is at least to pass this resolution and allow the people to act upon it; for if you still continue to disregard the welfare of the masses at the expense of a few men through and by a system which allows judges to be appointed and to be untouched by the public will, let me tell you, my friends, that you will but reap the harvest such as all oppression and nullification of the people's will always produces. Men said this at the time of the Dred Scott decision and men say it now when it has been decreed by the highest court in the land that it is perfectly proper to nullify the will of the people and once more condemn children to factory labor. For child labor is slavery.

Mr. SWIG of Taunton: I have the happy privilege of being a beneficiary of the present system, being associate justice of the First District Court of Bristol; but notwithstanding that, I rise here to favor the substitution of this resolution because I believe that the judicial system will be better protected by the substitution of this resolution than to have the present system go on. And when I say that I believe that the judicial system will be better protected, I have in mind something that only recently was enacted in the Congress of the United States, — the Sedition Bill. It was there urged that in order that the people might not take the law in their own hands it was necessary to pass a Sedition Bill so that the people might have a respect for the law and not undertake to make laws for themselves. And so I say that it is necessary for us to have a tenure of years for judges so that the people may have respect for the judicial system and not, through a lack of respect for the judges, throw down the entire system because there may be in it men who are not fit to wear the ermine.

I was provoked to rise to make this statement because of the challenge that was made by the gentleman from Quincy (Mr. McAnarney) this morning, when he said that no one had arisen to attack the judiciary in Massachusetts. To be sure, no one has arisen to attack the judges as a whole, but the gentleman from Quincy knows as well as we all know that there are men sitting on the bench in Massachusetts who are not fit, — some of them by reason of their lack of knowledge of the law, others by reason of their lack of judicial poise, and others because they lack the way and means of getting along with people or of conducting themselves other than as boors. We have some such men on the bench and the quicker the authority is given to the appointing power to get rid of such men, just so soon will the people of Massachusetts have a stronger regard for the judiciary than they now have.

What is asked here? It is asked merely that the Governor, the same appointing power, the same individual who now appoints the judges for life, shall continue to hold the same power, but that the tenure be for only ten years, so that in the meantime the Governor and the people of the Commonwealth may learn what the talents of that man may be. Many a man, who everybody thought would make a good judge, has been appointed to the bench, but after he was tried displayed defects, and the members of the bar as well as the general public have waited only for the day when it was possible to see a successor. Now by placing it within the hands of the Governor at the expiration of ten years to appoint a new judge, if a judge has been found wanting, you then create a condition that will bring about confidence on the part of all, because no Governor of this Commonwealth will turn down a worthy judge who comes up for reappointment, and an unworthy one certainly will not deserve reappointment. And that is why I rise here to-day to urge and to advocate the substitution of this measure, so that we may continue to have the respect for the judicial system to which we have been brought up in this Commonwealth. [Applause.]

Mr. Leonard of Boston: I should like to say a word in favor of the substitution of this resolution, although I feel that some of its provisions might need to be amended, particularly that which provides that no person shall be a judge unless he has attained the age of thirty-five and shall have been at least ten years a resident of the Commonwealth and practicing law for ten years, and that no person shall remain a judge after he has removed from the district of his court. I think all those qualifications are unnecessary. But if an effort is made to unite the opinion of many of the members of the Convention, I think we can agree generally upon a measure that will provide for an appointive tenure of judicial terms.

I do not think that this is an issue of conservatism or of radicalism. I think it is the most conservative way of administering justice to have a limited tenure for our judicial appointments. I myself was not in favor of the election of judges, and yet I think it is largely because of this system that has historically developed in Massachusetts that we are so wedded to the present appointive system. For as the gentleman from Boston (Mr. O'Connell) pointed out in his remarks that he made to us, in the State of New York, where they elect the judges, the people are wedded to that system. And still

again you will find in New Jersey, where the Chancellor appoints the judges instead of the Governor, the people of that State stand for that system; and I believe in Massachusetts that the appointive system has the merit of being approved of by the great bulk of the people. But when it comes to the question of an appointment for a definite term I think we are considering something very different, because our provisions for the removal of judges are very cumbersome, and we have gone so far at times, I believe, in the history of the Commonwealth as to abolish a court in order to get rid of a judge. Now it sometimes does happen that men on the bench develop infirmities of body or of mind, and there the existing processes of removal hardly can be resorted to. I do not believe for a moment that the having of an appointive term is going to cure all evils on the bench. I think we shall need other methods of removal when a man unfortunately becomes unfit to longer serve in that capacity. But I do believe this, that there is not going to be the politics in the reappointment of judges that some delegates seem to apprehend. There has been a great deal said about politics in appointments. Of course there is politics in appointments, just the same as there would be politics in the election of judges. But I do not believe that a judge who gives honest service is going to be refused a reappointment to office on political grounds. That may happen, it may happen once or twice, but it is going to be a very rare occurrence. And on the other hand, it does not overbalance the value that the people will have of having men who have become unfit removed from the bench. We do not want to have a situation such as sometimes has developed, — perhaps not in this State, — where the judge has called to the court officer to stop the noise in the court-room because four or five defendants had been convicted without the court's hearing any of the evidence. I believe that this resolution could be substituted and later it could be amended, and for that reason I favor the passage of the resolution.

Mr. ANDERSON of Newton: I am unalterably opposed to the election of judges and in general I agree with the conservative side of the Convention on this whole question. I do not believe that a majority of the gentlemen here really have read this resolution No. 345, and I wish that they would read it. I was opposed to it myself until I read it. I call the attention of the Convention to the remarks of the gentleman from Springfield (Mr. Kilbon) this morning, in which he stated that he thought there ought to be a larger debate on this very matter, that he had an open mind with reference to it, and I understood him to say that he was surprised that there was not really any exposition of the grounds of opposition to this particular proposal. Now this proposal is not for the election of judges at all; it is a proposal for the appointment of the judges of the lower courts, not of the Supreme Judicial Court of this State, for a term of seven years. The judges of the Supreme Judicial Court are to be appointed for life, except that a time of retirement is fixed for them at seventy years of age and a time of retirement for the other judges at sixty-five years of age. As the gentleman who has just taken his seat (Mr. Leonard of Boston) has said, we could amend some of the infelicities of this measure, — I think there are some, — on the next stage, but on the

whole the measure looks to me pretty good and I should like to know why conservative members of this Convention are opposed to it.

Mr. Finn of Chelsea: It so happens that I am the author of the resolution No. 345. I carefully read every measure that was filed in this Convention last year in one manner or another affecting the appointment or tenure of judges of this Commonwealth. I have read carefully the statutes that have been passed in this Commonwealth taking away from the judges rights which they formerly had and placing certain new responsibilities upon those very judges. I have read carefully the history of the judicial system of this country and I believe it is the outgrowth of the English system, a system that has an entirely different principle from ours. In England, originally, judges were appointed during the pleasure of the King, and because of the tyranny of the King, because of the royal mandates that the King's desires should be carried out by the judges, because the salaries of the English judges were at the mercy of the King, the judges were absolutely subordinate to him, to his whims and his will. A time came when the system was changed so that judges had life tenure. They were appointed by a man who ruled for life and they themselves held office for life. That system was brought over here, and with the principles of democracy as we believe them, with the principles of democracy as we have seen them carried out in this Commonwealth, we have no Governors, rulers or executives who hold office for life. The judiciary is absolutely independent from any branch of the government, but we do find the judiciary appointed here for life without any accountability, without any responsibility, without any one to answer to from the time the judge takes his robe of office to the day he departs this life. I am more particularly addressing my remarks to the lawyers than I am to the laymen of this Convention. I believe the laymen will feel as I do, — that a change of the system in this Commonwealth is necessary; and while the lawyers deep down in their hearts also believe that to be true, they never have had the courage, the moral courage, to come out of their shells, to keep away from whatever the bench may think of them, and tell you what they honestly believe to be the facts for a man who tries a case before a judge in this Commonwealth.

I have practiced in this Commonwealth over a dozen years and it may be proper to say that I myself am of foreign birth. As a foreigner I came to these shores as a child, and as I have grown older, as I have discussed with my brother members of the bar the judicial system of this Commonwealth, I have paused and I have given this matter a great deal of thought. I am sorry that this matter has come up in such a hurry. I have been detained in court all the morning, and I had not even looked at the notes which I prepared last year on this measure until a moment ago, when I received notice that this measure was being argued.

The first thing a foreigner coming into our courts is impressed with is the solemnity and dignity of the situation up to and until the time that the judge renders his decision, and in ninety per cent of the cases the testimony of the foreign-speaking person never is given the same weight as that of the man who speaks the language of the judge. In

ninety cases out of a hundred justice has not been done. There are judges of our courts who are members of this Convention. I should like to ask every judge: When you sit on a case do you give a foreigner's testimony the same weight that you would give a man who spoke your language and who appeared to be as Americanized as you are? I ask you: Why haven't you?

And there is not a judge in this Commonwealth who will say that he never has decided cases along those lines.

Mr. LYNCH of Milford: I should like to ask the gentleman if he would like an answer to his proposition.

Mr. FINN: My answer is "No" [laughter], not at this time. The reason I gave my colleague such a very curt answer is because when I went to law school I was told under the subject of evidence that when you coach your witnesses as to how they shall behave themselves in court you should instruct them that they should answer the question in as few words as possible and if possible by yes or no. I do not at all mean to be discourteous to the learned brother who himself is a member of the bench of this Commonwealth.

Mr. LOMASNEY of Boston: A learned judge.

Mr. FINN: Yes, he is a learned judge. I hope this discussion will assist him and other judges who are members of this Convention so that they will be able to deal out justice as it was intended originally to be dealt out. I remember that about four or five years ago I tried a case before a judge and jury in the Superior Court in Suffolk County and the judge was what commonly is known as a plaintiff's judge, and it was very unfortunate for my client that he was defendant. After the judge had given a very lengthy and careful charge to the jury on the issues of law involved, I stepped up to the bench, as is the custom, with my opposing counsel and whispered to the judge that he had failed in his charge to give my sixteenth, seventeenth and thirty-first requests, or something like that. The judge looked them over and said: "Well, don't you think I have given those substantially, Mr. Finn?" I said: "Your Honor, I don't think so." "Well," he said, "in order that there shall be no misunderstanding I will now give these requests to the jury." He then took my requests and when he came to the sixteenth he said to the jury while he was still sitting, — not rising, as is the custom, — and while I may not use the language that was then used I will try to tell you what he did. He said: "Gentlemen of the jury, I have forgotten to tell you that when you come to the question of the . . . if you believe . . . of course you will find for the defendant, otherwise you will find for the plaintiff."

[The language used by the speaker in the portions of the above remark omitted were uttered in a rapid and unintelligible tone, such as he claimed to have been used by the judge.]

Did any of you gentlemen hear what I said? Well, the stenographer sat close enough to the judge so that the stenographer had in his or her records exactly what the judge said. The judge had covered my request for rulings by reading them word for word; the jury heard them as you gentlemen just heard what I said, and the Supreme Judicial Court has once ruled that there can be no exception to the voice in which a judge charges a jury, so that even if I had wanted to I could

not except to the manner in which he delivered those requests to the jury. And still I tried to make my client believe that his rights were protected and that he was receiving justice at the hands of the proper authorities of this Commonwealth.

I was very glad that the gentleman from Newton who preceded me (Mr. Anderson) said a few words in favor of this measure. I take the same position that he does. I am opposed absolutely and unalterably to the election of judges; I do not believe in that system. I do not believe in it until we try this proposition, which is a half-way proposition. I believe the manner of selection of judges is now ideal. I am finding fault only with the tenure of the judge. I say that the man who is able, the man who has been honorable, the man who has dispensed justice while on the bench during his seven or ten-year term, — that man will be reappointed, no matter who the Governor of this Commonwealth may be. But there are times when it is necessary to remove even honest judges and able judges for other and more pertinent reasons.

Several years ago there were two judges, one of whom was disabled by age, — he had a habit of sleeping through the entire trial of a case, — a judge of the municipal court of the city of Boston; and another of his colleagues, who, while not so old, had become very, very hard of hearing. Neither of those two men chose to retire. And yet you who are not in favor of this measure would say that those judges were able to give you justice when you appeared before them. The condition brought about by the infirmities of these two judges was such that the justices of the court appeared before a committee of the Legislature and asked them to pass a bill enabling these two judges to retire on a pension. After a great deal of persuasion and seeing the necessity of helping the cause of justice the Legislature finally enacted a measure which could be applied only to these two judges. They had been in office something like twenty-five years or more and had reached the age of seventy or thereabouts, and one of them retired immediately upon the passage of this pension bill and the other one waited for some time.

A great many members of the Legislature within a dozen years or more will remember that a certain learned judge in this Commonwealth who had passed the age when he could properly and ably dispense justice refused to resign until he had dictated to the committee of the Legislature an increase of the salary which he then was receiving, and had them pass a bill enabling him to get either two-thirds or three-fourths of that new salary, so that he could retire on a proportionably larger pension.

When, a few years ago, the judges of the Superior Court were to be increased in number upon a recommendation of the then Governor, it may be news to you that a committee of the Superior Court judges waited upon His Excellency the Governor to prevent him from affixing his signature of approval to that bill, they claiming that they had now found a rule that would give a man a quicker trial than he was then receiving. Although for years before that time the dockets in Suffolk County had been three years behind, these judges, fearing that there might be some disturbance created by putting in six new judges at one time, immediately tried to prevent the signing of that bill by the Governor.

Judges are not in politics; that is what they tell us and that is what they would have us believe. I believe on the whole that the judicial system of this Commonwealth needs some change. I do not believe in a radical change; I think that since the 1853 Convention this idea of appointing judges for a term has spread. It may be news to some of you that that Convention passed an amendment similar to this whereby all judges would be given a ten-year tenure. That was passed and recommended by the Convention to be adopted by the people. But strange as it may seem, their procedure was different from ours, and instead of that individual proposition being submitted to the people it was incorporated in a bill which I think was something like two pages long, changing the number of Senators and Representatives and altering the entire apportionment, and among those things they had the change in the tenure of the judges, and it was defeated by the people, if I remember right, by a vote of about 4,000.

There is one weakness in the judicial system of this Commonwealth which this resolution does not attempt to help, and that is the fact that all the judges are grossly underpaid. The Supreme Judicial Court Justice should get $15,000 or $18,000 a year, and the Superior Court judge should have his salary raised to $12,000 a year or more. In New York city a judge occupying a similar position to that of a Superior Court judge here receives a salary of $14,000 and it has been increased lately to $17,500. Now I say that a man who will be appointed to the Superior Court for a term of ten years as my resolution provides, — and I am assuming all the time that he will be paid a proper and adequate salary commensurate with the duties that devolve upon him, — should not be mixed up in the Probate Court or any other court or any kind of proceedings and should not have to shovel any one's dirt to show whom he favors and who the crowd is that he travels with. If that could be done and you had the tenure of ten years for a Superior Court judge, you would know that that judge, if he responded to a request for ruling in the way he did to mine, would not dare to think he had a right to reappointment or that he was doing his duty honestly and faithfully. Remember, the weak are the ones I am pleading for. The strong need absolutely no one to help them out, because if one judge does not help them out they will travel higher until they get a judge who will decide in their favor if possible. But remember the weak, the man who appears before a judge in a police court, the man who appears there possibly without counsel, the man who cannot afford to hire counsel, — remember that he appears before a man who has absolutely no interest in humanity; remember that he is absolutely removed from you and from me at all times. Judges do not travel with the rest of us, they do not live the same life that we do, and they do not do it because you have placed them on a pedestal. You have done for them what you would not do for your executive; you would not do for the President of the United States what you have done for them. You let them stay there and rule forever as they please and how they please. Remember the unfortunate. Remember that he needs your protection; he needs justice; he needs that tempered with mercy. Where do you to-day hear that in the courts? Remember that when a man appears before a judge, if the judge feels good, if he had a perfect night's sleep, if his digestion is not affected that morning, everything is pleasant; he is pleasant to counsel; he is

pleasant to the clerk; he is pleasant to the jury. But you have gone into court some morning when you have seen the judge grouchy in a motion or the case ahead of yours, and you have decided that you would wait till the next morning or the next week before the judge heard you, hoping that he would then be in better humor.

Now those things, minor as they may be, become gross and they afterwards amount to injustice rather than justice.

The system of the Commonwealth needs revising. This is a measure that I believe the people will accept. I believe that this measure, if carried out in its entirety, will help solve the judicial situation. Gentlemen, I want to read you for your attention one part of this proposed amendment:

> No person shall be appointed a judge who shall not have attained the age of thirty-five years and have been ten years a citizen of this Commonwealth and been admitted as an attorney for ten years.

I remember not very long ago the appointment not of a special Justice but of the Justice of one of the district courts of this Commonwealth, of a man who had not been a member of the bar a year, — I think it was less than six months, — who in all that time never had tried a case in the Commonwealth, and still that man was appointed a judge of that court and it was expected that he would have the ability to dispense justice without any experience at all.

Then in the last paragraph this resolution provides that —

> No person shall be appointed as judge in any of said inferior courts unless at the time of his appointment he is a resident and qualified voter within the venue of said court, and his commission shall expire upon his removal from the venue of said court.

Some of the Governors of this Commonwealth have chosen as judges for courts in the city of Boston non-residents of the district. I suppose that it would mean one of two things: Either that the city of Boston did not have a competent man to fill that position, or if it did the Governor owed that particular person nothing and therefore could not appoint him.

Gentlemen, a lot of politics is played in the appointment of a judge. Do not erase that from your minds. In very, very few cases is there no politics. But after he is appointed what does he know about the office of judge? He knows as much about it as the law student who has taken his degree in the law school and has passed his bar examination successfully, — as much as that man who has been admitted to practice law knows about the practice of law. He knows only the theory of law. That is all the man knows who is admitted to practice on the day that he is sworn in. It is the experience that he acquires in his office or in the courts that broadens him as a lawyer, that makes him more able, that makes him eventually the most sought lawyer in his district; and the same is true with the judge. No one knows who is going to be an able judge until he has been a judge, until you have seen him under all sorts of situations, where you can judge the man, where you can see whether he is able, whether he does measure up to that position which he holds. Every man in any profession, in any business, is required first to become experienced and make good, and as he makes good rises and success goes with him. But the contrary principle is applied in this Commonwealth when it comes to the selection of a judge. Take a lawyer, experienced or inexperienced, and

because the Governor says that he shall be the judge in that court and because no one happens to have either the courage or the knowledge of the man so as to object to his appointment or the confirmation by the Governor's Council, that man seven days later becomes a judge. How do you know what he is going to do? How do you know how he is going to carry out the obligation which he took when he was sworn in as a judge of that court? Occasionally a judge of a district or a police court is appointed a Superior Court judge, occasionally a Superior Court judge is appointed to the Supreme Judicial Court, but those are exceptions and not the rule. A great many members of this Convention believe that the Supreme Judicial Court should not be touched, that this resolution should not affect the appointment or tenure of members of the Supreme Judicial Court. And while I have been listening to their reasons and while I agree with them, I never have told them why that was so.

The reason I have not included the judges of the Supreme Judicial Court in this measure is because I thought they ought to have from twelve to fourteen years' tenure, to be consistent with the rest of the provisions. As it provides that the police court judges shall be appointed for seven years, and the Superior Court judges for ten years, I thought the other should be twelve or fourteen. I then examined the figures showing the term that the average Justice of the Supreme Judicial Court has held office, and I have found that there have been very few young men appointed to it, and properly so. But I also found that the average tenure was about thirteen years, that they either resigned or passed away, and that was the average. Now, if the average of the Supreme Judicial Court judges is thirteen years by actual figures, then there is no need of trying to limit it by a Constitutional amendment, because if those figures have been true for a hundred years most likely they will continue that way.

I just want to make one forecast. The time is coming when there is going to be a great demand for the election of judges in this Commonwealth. Labor has agitated it for years and it has been successful in a great many of the States. It is now the system in more than a majority. I venture to say that in this Commonwealth that agitation will continue to grow until finally you will have it in our Constitution. I do not want to see that day come. I want to see judges appointed who are picked by a man who knows the men he wants. I want that man tried out, as it were, for a probationary term of seven or ten years, as the case may be, and then if he makes good I want to see that executive, then in office, reappoint that man; and if for any reason, from infirmities of age or otherwise, due to any accident, or if because the judge has not measured up to the situation, then I say this Constitutional amendment will protect the rights of the people. It will give them an opportunity to put a man there who will make good.

I hope, gentlemen, that you will think of this situation a little more carefully than you have. There is a whole lot more to it than I have discussed with you. Some one has made a quotation and I want to conclude with that quotation:

Massachusetts should

> Be not the first by whom the new is tried,
> Nor yet the last to lay the old aside.

[Applause.]

Mr. McANARNEY of Quincy: Mr. Shea of Dalton, who had this resolution in charge for the Judiciary Committee, is not here this afternoon, and the chairman of the committee has asked me to take charge of the matter in his absence.

I wish to discuss the resolution, if possible, in a practical manner, because it is a practical question; for any matter that has to do with our property, — our liberty, property and our very lives, — in the last analysis is to each and every one of us a very practical one.

First let me clear up what apparently is a misunderstanding as to the scope of the measure it is proposed to substitute. A gentleman in this division has said it related only to inferior courts. That is not so, — unless he and I differ as to the meaning of the word "inferior." Is the great trial court of this Commonwealth, the Superior Court, before which practically all questions of property rights and liberty are tried, — is that court an inferior court? If so, it will be news to those of us who are familiar with our courts. The term "inferior courts," in the common acceptation of that term, with no disrespect to them, usually refers to the lower courts, the district and the police courts. This resolution, however, applies to the Superior Court as well as to the municipal, district and police courts. It has to do with the manner of selecting the men who shall preside over those courts. Is it wise, or necessary, to make any change in the manner in which they shall be selected? If so, then the change should be made without any fear or hesitation. But it is elementary that he who advances a proposition shall show reason why it should be adopted before he can expect its acceptance.

Now, what are the arguments that have been advanced? I take them from the lips of the last speaker, and from his lips I hope to carry condemnation to his own proposition. Who are the judges he is pleading for? The weak judges, he says. Who are the men who are faltering and need the supporting and sustaining strength of this proposed change? The many great judges who have adorned and are to-day an honor to our judiciary? No. Such men do not need this change, do not need any change in our appointive system. He says, it is the *weak* judges whom this change would affect. Yes; and it is on account of the weak judge that I pray in the name of God this proposed change may not be made.

When you go into court, sir, and your rights are put on trial what do you want the judge to have in his mind as he sits there to administer the law governing those rights? What do you want the judge to be thinking of? Do you want him to know only that his fellow-citizens are standing at the bar of his court seeking justice, seeking only that, and to that end asking the law shall be impartially and fairly administered by him? Do you want the judge to be thinking only of the duty he owes to such or do you want him to be thinking of something else? Of what do you want him to be thinking?

The gentleman in this division who has just spoken (Mr. Finn) wants him to be thinking of his reappointment. Is not that where, in the last analysis, his argument leads? Do you want, sir, if a case is on trial, the judge to have in his mind, — the weak judge, — this thought: "What will be the effect of my decision in this cause on my reappointment? Justice may be with this party, but I know public sentiment stands back of the other. If I decide with the side

public sentiment is on it may have a vital, a controlling bearing upon the matter of my reappointment."

Do you want that weak judge to be swayed by such thoughts, or do you want him to be above all that, with his eye fixed only on justice? Do you want him, with his ear to the ground, using a slang phrase, to be thinking of the effect his decisions may have upon his future? How are you going to strengthen a weak judge by telling him: "Go on the bench, but when you do so, remember that the question of whether or not you are going to be reappointed will depend upon how you decide causes; how popular your decision may be; whether you bend before the public will, or resist it." If he is weak, and that is said to him, God pity the supplicants for justice who come before his tribunal, because he may decide their causes having in mind his own selfish interest. The weak judge, for whom he pleads, is the man from whom we want to keep such thoughts away. That man does not need the change. If he needs anything, he needs something to strengthen him, to give him courage; courage to do his duty irrespective of the stress of temporary public clamor, politicians or self-interest.

Mr. ANDERSON of Newton: I should like to ask the gentleman whether this legislation would not eliminate the weak judge; whether that is not the purpose of it; whether to a large extent it would not have that effect; whether, as a matter of fact, the Governor's reappointment of a man whom the people thought capable would not come to a judge as a reward of merit.

Mr. MCANARNEY: What does the learned gentleman mean by the term "weak judge?" Does he mean what I mean?

Mr. ANDERSON: The gentleman has asked me the question what I mean by a "weak judge." I mean by a weak judge a man who is not deeply learned in the law, a man who for various reasons is incapable of doing the duties of his public position in such a way as to grant justice to those who come before him, a man who on account of defects of character loses his reputation with the bar, or a man who on account of lack of real integrity loses his reputation with everybody.

Mr. MCANARNEY: The gentleman has but partly defined the word "weak." He has not gone far enough in applying that term to a judge. Taking the definition he has given us, is it argued here, has it been argued here, has any delegate dared arise and say that any Governor of this Commonwealth has appointed men to the bench of our Superior Court who are not learned? I have not heard such an argument.

Mr. LOMASNEY of Boston: When the gentleman stands here boldly in this Convention and asks if any Governor did it, I say, "Yes, sir," and I will name him. Judge Hitchcock of the Superior Court was not qualified to be a judge of the Superior Court. [Applause.] The gentleman challenged this Convention, as a lawyer. I could not sit silent, knowing that the honorable gentleman whom I named was but a Justice of a police court, an inferior court, as he stated, in the city where he lived when he was selected, and that James E. Cotter once in court protested against the way he was treated, and told him there that such decisions might do for a police court but not for the Superior Court of Suffolk County. I want to warn the gentleman hereafter that when he desires to challenge the Convention he wants

to realize it is a dangerous thing to do, because we all come from Massachusetts, we all respect the State, we do not want to say anything against the State; but representing people who know these things, we cannot be challenged when we know the facts. And I can tell the gentleman something about some judges, too, if he insists on trying his case on that line. We need not try them on that line. Keep the judiciary up. But realize that they are human beings and that they make mistakes. Do not ask men of common sense, who suffer by these mistakes, to sit silent and allow such opinions to go forth unchallenged. [Applause.]

Mr. McANARNEY: The decisions that Judge Hitchcock has made have been a matter of record, either by accepted verdicts in the courts in which they were returned, or they have traveled on to the last tribunal in this State, the Supreme Judicial Court; and I defy him, and I defy any other man in this Convention, to examine the reports of the Supreme Judicial Court since Mr. Justice Hitchcock has been upon the bench, and then come back here and say that Mr. Justice Hitchcock has been overruled by that Court more times than other judges who are on that bench to-day. The gentleman has brought Mr. Justice Hitchcock into this case. I hold no brief for that honorable judge. His long and honorable career upon the bench needs no defender, — it is its own defence. I do not know the man off the bench. I have tried some causes before him. Who was Judge Hitchcock before he became justice of our Superior Court? For years he sat upon a tribunal in Chicopee, as justice of the lower court. For years members of the bar of this Commonwealth practiced before him while he sat as judge of that court. Why was it then that this man who had been tried and tested was selected after his years of experience and put upon the bench of the Superior Court, if he was unfit? If he had not demonstrated his judicial qualities and worth by his conduct upon the lower court, why was it there was not some voice raised in protest against him when his nomination came up for confirmation before the Governor's Council? Not one word of protest was raised. The appointment was accepted by the bar and people to whom he was not unknown. It was made after he had rendered just service, honorable service, to this Commonwealth.

Mr. LOMASNEY: Does the gentleman give way?

Mr. McANARNEY: I do not give way. I am answering the challenge. I am speaking now in defence of a man whose lips are sealed and cannot speak here in his own defence. It was not necessary, — and I repeat it, — it was not necessary for the gentleman in my rear (Mr. Lomasney) to name a man in this debate. And I cannot stand here as an officer of the courts of this Commonwealth, and permit such an attack on an honorable and venerable member of our judiciary to go unanswered, although it comes from a man who is my close personal friend. Mr. Justice Hitchcock does not need any defence from me. I have given my challenge to the honorable member who has named him. It will be open for acceptance, as the debate in this matter will be continued next Tuesday, and my learned friend will have Saturday, Sunday and Monday to go through the reports of the Supreme Judicial Court of the Commonwealth and see whether I am in error.

Now I come back again to argument on the real question before the

Convention. Does one need to more than state it to have it answer itself? Lay aside the heat of debate, throw away all these arguments of personalities, come to the question as a virgin proposition, and I trust to the honest judgment and common sense of my friend from Boston (Mr. Lomasney) to give a convincing answer to the question which I am going to propound.

If you were starting a new Commonwealth, if you were trying to follow out the provisions of the Constitution of Massachusetts, and were endeavoring to have your causes tried before a tribunal as free and impartial as the lot of man will admit, what kind of tribunal would you suggest? Turn to your Constitution, drink in the full significance of these words:

> It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit.

Free from what? They are citizens as you and I. They have their political rights, but that does not mean political freedom. Free from what? Free from any bias, free from any possibility of corruption, — and that is a weakness which transcends in its importance any weakness named by the reverend gentleman from Newton in this division (Mr. Anderson). There is more danger from one corruptible judge than from a hundred merely weak judges, and it is to the glory and credit of the judiciary of Massachusetts that we never have had such a judge on our Superior Court. Weakness does not mean merely a man who may have dyspepsia to-day and be calm and cool to-morrow. Free from what? Free from every motive and influence which might turn them from doing their duty according to their conscience and oath of office.

Pass on to the next word in the quotation, "impartial." What does the word "impartial" mean? How is a man going to be made impartial? If a judge were trying a case, and a near relation, or one having some power or influence over him, were the plaintiff or defendant, would he be impartial? Consciously or unconsciously there might be a bias or influence operating on his mind. If he is to be made and kept "impartial" he ought to be placed so that no influence, — social, political, financial or personal, — would bear either consciously or unconsciously upon his mind. How can you secure a man in a position where no personal, social, political or financial interest can have a hold, consciously or unconsciously, upon his will? How can you do it better than by saying: "Go upon the bench. We will make you free from all influences but the desire to do right, to render justice. We will put you in a position where you will have no reason for being other than impartial, because your position will be yours so long as you behave yourself, even if that spells the term of your natural life."

Now we come to the last qualification named in the Constitution, "independent." Independent of what? And here we come to the nub of the whole thing. Independent of every kind of improper bias, influence or control. Do you want your judges to be independent or do you want them to be dependent? How are you going to make a man independent? Are you going to make a man independent by saying to him: "Go upon the bench for five years, or ten years, and if your record as a judge does not suit the dominant party of the

Commonwealth, or a considerable number of the voters, at the time your renomination comes up you will fail of renomination." Is that making him independent, or is it more likely to make him independent if you say to him: "Go upon the bench, do your duty fearlessly without favor to any man, and you will stay there as long as your health and strength permit, even if it means for your life."

Let me give you an illustration — an illustration outside the limits of the Commonwealth. A learned member of this Convention last night called my attention to a State where a judge in interpreting the law of that State, quite recently, gave a decision which offended a number of voters of that State. He knew it would offend them, but it was his duty to declare it. It was the pronouncement of the law of that State as declared by its court of last resort. He came up for reëlection or reappointment a short time after he gave the decision. What happened? The people who were offended by his decision organized against him, and put up an opposition candidate. The State lost the benefit of his services, the opposing candidate became judge in his stead.

Which of these two men would be more likely to be independent? Which of these two men would be more likely to administer the law as you and I would want it administered? Which of them would be more likely to administer the law as you and I would want it administered if we were parties before that tribunal? Can there be any question about it?

The gentleman in my rear (Mr. Finn) put a question to the judges of this Convention. A delegate asked him if he wanted an answer. Why did he put the question if he did not want an answer? What was the question? He asked the judges of this Convention, — think of it, let it sink into your mind and your sense of fair play, — asked the judges sitting in this Convention if they gave the same measure of justice to men who appeared before them who happened to be foreigners as they did to men speaking the English language.

Gentlemen, have we reached such a state at this day in this Commonwealth of Massachusetts that a man will dare to address such an argument to you? Think of it! The very question itself was an insult, not only to the judges, but to every person who heard it. It is hard to control one's self when one finds a measure urged by a man who would put a question like that, as an argument in its favor. Do you think a judge who would do as that question implies would render justice in any court, whether he was on the bench for ten years or for life? What do you think? What do these men want? Do they want to make our courts of justice temples of justice, the refuge of the people against wrong, injustice, public clamor and temporary public passion? Do they want to make those courts the football, the plaything of politics, a place to which men will rush every few years for appointment, and seek to be carried into office on the crest of some popular issue of the day, or by some political party or powerful interest?

What kind of a man will you get upon the bench if you say to him: "Go upon the bench, leave your practice, leave your profession, put yourself upon that bench for ten years, and then step down and out. If you want to go back fight for a reappointment"? Ah, there is danger the weak man or the selfish one may shape his course so as to

make sure of his going back again for another ten years, and that is what we do not want.

Do you want able men upon your bench? Do you want fearless and independent men? Who are the able men? As a rule they are the men who before they go upon the bench have been enjoying a lucrative practice. Will you be able to get the best lawyers to go upon the bench if you say to them: "Give up your lucrative practice, go upon the bench for ten years with the uncertainty of a reappointment"?

Take the argument they themselves advance. Politics, they say, dominates the appointments to the bench to-day in this Commonwealth.

Let us accept the standard of appointment they themselves assert. Politics has to do with the appointment of the judges. All right. A ten-year limitation to a term of office will not remove politics, will it? If a ten-year term does not remove politics then what do you get? Do you get less politics or more politics?

Mr. CREAMER of Lynn: I should like to ask the member from Quincy if he will just tell me and the other members of this Convention what he would do with a weak judge.

Mr. MCANARNEY: I would do this, if you will first let me say it would depend upon the nature of his weakness. If he was a corrupt judge the Constitution furnishes a remedy. If he was weak in the sense that he was not a profound lawyer, then I would consider whether or not there were other qualities that outweighed his lack of profound knowledge of the law, because, after all, remember this resolution is not dealing with the Supreme Judicial Court. If a judge makes an error of law in the Superior Court there is a Supreme Judicial Court before which the cause can be taken and the error of law can be righted. I would prefer to take the chance of occasionally having a judge upon the bench who was not a great lawyer, if he was honest and just, than take the risks of a ten-year appointment. What I do protest against, and what the Judiciary Committee protests against, is this: Making the matter of judicial appointments the possible subject of political reward every ten years. And is not that what you are likely to get if there is any force in the argument which has been advanced, that the judicial appointments to-day are subject to political influence?

This question is not a new question; it is old.

Debate was resumed Tuesday, June 18.

Mr. MCANARNEY of Quincy: In the debate on this resolution last Friday several gentlemen referred to the decision of the United States Supreme Court on the so-called child labor law. Personally I fail to see any application that decision has to the subject-matter which we are now considering. The question before the Convention is whether or not we shall change the Constitution so as to permit the Governor to appoint our judges for a limited term of years. There is nothing in the proposed resolution affecting the jurisdiction of the court or the power of the courts to declare a law unconstitutional; therefore it seems to me that the arguments of the gentlemen, so far as their arguments are based upon the child labor law, are far afield from the question under consideration. It makes no difference whether a judge

is appointed for a limited term of years or for life. Under our Constitution as it is to-day, as it may exist notwithstanding the adoption of this resolution, if it should be recommended by us and adopted by the people, the Supreme Judicial Court still would be charged with the responsibility of passing upon the constitutionality of laws. What would you have our Supreme Judicial Court do if the Constitution required it to pass upon the constitutionality of a given piece of legislation? Although every member of that court believed the legislation to be wise and proper if it were not for the fact that it ran against some provision of our Constitution, and they under their oath were charged with the duty of passing upon the constitutionality of that act, what would you have them do? Would you have them ignore their oath of office and refuse to declare unconstitutional a law which they knew to be unconstitutional, be false to their oath? Of course you would not, you would seek the true remedy. If the law is unconstitutional because it has not been passed in proper form you would seek new legislation. If it was not within the power of the Legislature to deal with such an act under the Constitution as it exists, then you would seek to change the Constitution.

I do not intend to trespass upon the time of the Convention this morning even for the full time extended to me. I want briefly to state some of the arguments against the proposed change. What kind of a man is it we want to be appointed a judge? We want a man who has proven himself to possess those qualifications which commend themselves to all of us and should do so to the appointing power. Those qualifications are kindness, ability, experience, knowledge of the law and a capacity to administer it fearlessly, without regard to the parties before his court. Who would be willing, if such a change as proposed were adopted, to take a position upon our courts? Would the young man starting out in the prime of life be willing to give up his whole career as a member of the bar to go upon the bench for a limited term of years? Would he be willing to take a position on the bench and say: "I will throw aside everything else and devote my whole thought, my life during these years to proving that the appointment the Governor made in putting me on this bench was a worthy appointment"? He might not. He might be compelled by force of circumstances to say: "I will accept this position as a temporary affair for the period allotted to me." Those of us who have had experience at the bar know that when the man goes upon the bench he has to lay aside those qualities that make so much for success at the bar. Success at the bar in part comes from partizanship, strong partizanship, the power and the capacity to earnestly impress your views upon those to whom you are addressing yourself. It takes training, it takes experience to enable a man to become a successful advocate. Take that man and put him on the bench; he has to lay aside all those qualifications, and has to study how to overcome them, — to make himself anew. And when he has succeeded, — which usually takes a considerable period of time, — in laying aside the qualities which made him a successful member of the bar, and has made himself a successful judge, do you, when that time has arrived, want to say to him: "Now go back into the ranks of the bar once more and take up the work of the advocate"? He would be thoroughly unfitted for it. It seems to me that if we are to have our judges con-

tinue to exercise the responsible authority the Constitution to-day vests in them, then by all means we ought to say to the men who go upon the bench: "Take this position, give up your practice, give up the future at the bar that you had a right to look forward to, devote all your time, your thought and your energy to perfecting yourself, making yourself a strong member of the bench; it is your life work; it is ahead of you so long as you are capable of rendering service to the Commonwealth." When we say that to a man we open to him an inviting field, an honorable future.

An objection against the election of judges is this: That it would tend to make politicians out of candidates for judgeships. An objection against an appointment for a limited term of years is the same, practically, with this distinction, that you make a politician out of a man after he has become a judge. Under the election of judges the man becomes a politician of necessity before he can become a judge. If you limit his term of service to ten years, of necessity you make that man a politician after he becomes a judge, the very time you do not want to have his mind dwelling upon the political effect of his actions.

A strong argument, it seems to me, in favor of our present system is the fact that it makes the man independent in the exercise of the functions of his office. I cannot impress too strongly upon the Convention the necessity of keeping our judges independent of all popular clamor, prejudice and passion. It has been said that after this great war is over we are going to have social, political and economic upheavals in this State and throughout this country. Is the hour coming when those upheavals are to occur? Does it not commend itself to you that then will be the time we shall want our judges independent of all such upheavals and disturbing influences? We want one tribunal, one place in this Commonwealth, where our rights will be secure. On Saturday I was talking with a gentleman holding a high official position in this Commonwealth. He cited to me the case of two judges in one of our western States whose term of office expired during an economic upheaval. One was a Republican, the other a Democrat. Both men had served the State well for the limited term of years they had been upon the bench. They had been compelled, in the discharge of their public duty, to declare unconstitutional certain laws and to render certain decisions that offended certain I. W. W. interests in that State. What was the outcome? When those men came up for reëlection they failed of their reëlection because the powers that be were under the control for the time being of the influence they had offended, and those men went down into private life and the State lost the benefit of two able judges. We do not want that in Massachusetts. Our Governors are but human; and do you believe that if we were in the midst of an upheaval involving labor questions, social questions or any other disturbing questions that might come up, and the matter of a judge's reappointment was before a Governor, and the man had proven himself a wise, just and able but independent judge in declaring the law, and had offended some strong or loud and clamorous political party or influence, that there would not be grave danger, if sufficient political pressure were brought to bear upon the Governor, he might not reappoint that man? Is it not wiser and better to avoid any such danger? Are not our property rights, are not our personal

rights and our liberties, more secure when we go before a court that is above any influence, any possibility of influence of that kind or of an improper character?

Mr. JOSEPH F. O'CONNELL of Boston: Does the gentleman mean to say that life and property are more sacred here in Massachusetts than they are in the forty-three States in this Union that have an elective judiciary? Are not life and property just as valuable and just as well protected in the other States of this Union as they are here?

Mr. MCANARNEY: Life and property are equally valuable everywhere. But I do say this, that it is my opinion, born of personal experience in seven or eight different States of this Union in which they do not have an appointed judiciary for life or good behavior, — it is my experience that nowhere in this Union are the laws as well administered as they are here in Massachusetts. Nowhere do the decisions of the courts command the respect of the people they do here. That is my experience and it is a practical experience, because my practice for many years has carried me outside the confines of Massachusetts. Turn to the record of other men, able lawyers, who have had to do with causes in other States of the Union, part of these forty-one or forty-two my friend refers to, and ask those men their judgment, and they will tell you that it is their honest judgment that Massachusetts has a better system than they have in those other States.

Take the argument of the learned gentleman from Fall River (Mr. Cummings) when the I. and R. was under discussion. Do you remember how he called attention of the labor men in this Convention to this striking fact, that in Massachusetts labor laws had been interpreted more liberally and our Supreme Judicial Court was in advance of the courts of last resort of many of those States where they had an elective judiciary? I doubt if the gentleman was speaking from his imagination; rather I believe he was speaking from study and careful investigation.

The difference between an elective judiciary and a judiciary appointed for a limited term of years is not a very great one, each having inherent weaknesses. If our present system has endured all these years and has rendered good service, what is the objection to it? Only one serious objection has been mentioned, and that is, it is said that we sometimes have weak men appointed to the bench.

Mr. FINN of Chelsea: I should like to have the gentleman answer me whether he understands that the Supreme Judicial Court is not included in this proposal No. 345; that it is entirely eliminated from its provisions.

Mr. MCANARNEY: There is no question about that. But I submit that the gentleman as a member of the bar knows that whenever any cause goes before our Superior Court the trial court has to pass upon the rights of property as well also, at times, as to the personal rights of the litigants who come before it. There is no distinction in principle; it is merely a difference in the extent to which the rule is carried.

It is said that we sometimes have weak men upon our bench, and therefore because they are weak we ought to change our whole system. Is that a sound argument to advance? Shall we destroy a good system, a system which has rendered us such valuable service and kept our courts on the high plane on which they now are, merely

because some few men say that we have had men upon our bench whom they regard as weak men? I regret very much indeed that in our debate last Friday the names of any of our judiciary were brought into the debate. I think it was unwise and unfortunate. I can say, from an experience of twenty-nine years at the bar of this Commonwealth, it is my firm belief that in those years there never has been upon the bench of any court of this Commonwealth before which I have appeared a man who was not conscientiously honest, just and doing his best according to his light to render justice between party and party before his court. And when you can say that and say it truthfully of a court you are saying a great deal in favor of the system that creates such a court. Men may have had their personal differences with judges; we all have had our personal differences with some judge; but after all, after those differences have passed away and calm reflection has taken possession of us, do we not know that in ninety-nine out of a hundred cases the court was doing only its duty, and perhaps was nearer right than we were? Let us remember judges are but human. Let us not forget the worth of the judge, in watching the weakness of the man. Is there not danger that if we abandon our present system merely because it is said that we get weak men upon the bench, we ourselves are doing what John Boyle O'Reilly, in that famous poem of his delivered at the dedication of the Pilgrim monument, said of the Pilgrim Fathers? In describing those early fathers he said in effect: So intent were they in watching the frown of the Lord that they missed his smile. Is there not great danger at this hour, if we take out our magnifying glasses and try to find defects in our system, that we shall lose sight of the overwhelming benefit that comes from the system? [Applause.]

Mr. Kneil of Westfield: I presume there has been no question before this Convention which presents to the lawyers of the Convention, against whom some pleasant cavil has been made, so deep and vital an interest as this. I speak, I think, for many lawyers in the Convention. I am prone to sympathize, prone almost to believe not in the election of judges but in their limited tenure of office. There has been a search, a quandary in my mind, and, I dare say, in the minds of other lawyers in this Convention upon the general subject of this debate. Perhaps I may be pardoned a reference which is outside the main lines of the discussion. I think the lawyers here, — most of you know them, — bring here a sincere, honest thought, intent and purpose, oh, so entirely apart from any personal interest or advantage, to do the things which ought to be done. The whole history of our profession is that way. There are some things which incline me most seriously and earnestly to believe in a limited tenure of office. Not ignorance on the part of some judges, as has been suggested in the debate, unless it may be in the inferior courts, — the police, district and municipal courts. I never have seen it in our upper courts. It would be preposterous in me to assume ignorance in our Supreme Judicial Court or our Superior Court. It may occur in the lower courts but, if so, it is trivial in its effects. We have got to expect that in the operation of any system. But I have seen this, and it has caused me serious thought. I have seen this, not in the Supreme Judicial Court, whose judges "bear their dignities so meekly and are so clear in their great office", whose embodiment and ex-

pression stands and sits in this Convention the gentleman from Fall River (Mr. Morton), one who does us honor by his presence, — never in that august body; but in the Superior Court I have seen this, nor is it a complaint of petulance, nor is it personal or querulous. I have seen a certain arrogance in some, — a very few, but some, — of the judges of the Superior Court; an offensive assumption of importance, by reason of their permanent elevation to office, which is a most insufferable and obnoxious thing in a democracy.

It goes so far as to rebuke and affront court officers, attorneys, witnesses and jurors. It is a part of human nature, I suppose, but it seems to many members of the bar, as I hear them express it, a behavior which is detestable. It seems that this could be modified or prevented by a return of such people, — not at the end of seven years but fourteen years, perhaps, following the New York practice, — to private life. What says our old Bill of Rights? Rotation in office, sending public officers back to the people from whence they came, is declared to be the right of the people in order to prevent those vested with authority from becoming oppressors. So says our splendid Declaration of Rights. I should like to see this condition of which I have spoken done away with. It is not a small matter. I do not think there is a lawyer in this Convention who has not suffered from it. I do not complain of the Superior Court for any ignorance. I never have seen it there. I have practiced for thirty years and I think I have practiced before all the judges. But there is sometimes that spirit, the attitude of cuffing the ears of witnesses and counsel, of setting down people in their seats and the assumption of petty authority which ought to be rebuked, which is an affront against the rights of the private individual and which would be prevented by sending the judges back to the earth, the common earth which we all tread, to start again.

That first. Second, another thing has been in my mind. There comes a time when perhaps age, — this has been taken care of in the proposed resolution for a limited tenure of office, — a time when age or physical condition produces an unfitness or incompetency which is unknown to the incumbent. It is a beautiful provision of nature that we do not know always when we are getting old and feeble and deaf and the mind does not spark. There sometimes comes a case where a judge, for these reasons, should get off the bench. And how do we handle it? What are the remedies? Impeachment? No, preposterous. Address of the two Houses to the Governor? No, unless in case of wilful and outrageous misconduct. How do we handle the situation? Is there a satisfactory method? I was in the Legislature many years ago, in 1893 and 1894, when a county court was in trouble here in Suffolk. A man who ought to have got off would not get off. He wanted a pension, he wanted this, that and the other thing; he thought he was as good as he ever was. The Legislature had to appoint another judge who practically crowded him out of his place. What also have we done? What happened, if I am told aright, to the Court of Common Pleas, the predecessor of our present Superior Court? The Legislature abolished the whole court to get rid of some of the judges and substituted another court. That is done in the case of some of the inferior courts; we abolish the court and create another court with a little different district, something a little differ-

ent than the old, to get some particular judge off the bench. These things have appealed to me and appealed strongly, as needing action. I say again that I do not speak of them in any querulous spirit, but that is the situation. One of the most unpleasant and obnoxious things the bar has to do is to tell a judge, through its committee or his friends, that he ought to resign; but sometimes he clings on and resort must be had to dodging and subterfuge to accomplish the result. A remedy would be found in a limited tenure of office or an age limit of sixty-five years. I would not put it at seventy years. What are we going to do about it? I know the situation; there is hardly a lawyer here who does not know it.

However, I should not seek a remedy in the election of judges. Of the three branches of governmental office the executive and the legislative are responsible directly to the people. These two are responsible to the people, but the judiciary never is. The executive and the legislator may listen to the passing whim of the moment and regard the voice of the prevailing majority. They may decide as current things go. As the tide turns they may shift and vary; and rightly so, because the executive and legislative departments are expression of the people. But the judiciary never, gentlemen. Eternal, strong, permanent, they are the ones that ride out the prevailing storm and settle back on the old, ancient principles, the old common law of English-speaking peoples, which is the embodiment of the experience, and the result of all the mistakes, of all the determination of truths by trial and error and final discovery of right for a thousand years, — the common law which Massachusetts judges administer. And how widely we administer it, gentlemen. It goes to Texas, it goes to Washington, it goes to far-off Canada. Ask of them to whom they look for the determination and utterance of the common law and it is to Massachusetts, — to Shaw and Bigelow. Pardon me if I say that our courts to-day are adjusting themselves like a basket to its load; not breaking like a rigid bucket, but yielding, accommodating and adapting itself to things as they are instead of things as they might be or are hoped to be. Massachusetts finds in our present Supreme Judicial Court, Rugg being Chief Justice, the best expression there is to-day of, not the statute law, for that is incidental, but that great body of law which is the real thing. Nobody can define it; it is the experience of centuries, and the authoritative statement of it to-day is in our own Supreme Judicial Court, never better than at this moment. What is the course to follow? Shall we after all change our system and cut the judges down to a limited term of office? I sometimes think that we might well do this; but the stern question is what action we should take at present. We are now engaged in an awful war, when the foundations of the great deep are broken up, when all of our wonted and ancient landmarks may be afloat. I cannot lift the veil. I should hate to lift the veil from what will happen after the war is ended. In the words of Scripture, all the foundations of the world are out of course. The great seas are roaring. The great bases of social order, wisely or unwisely, may be removed. What shall we do? Back of it all is the general belief and confidence in that common law which the Supreme Judicial Court of Massachusetts represents, which the Massachusetts Judiciary represents, a belief in those eternal things based upon the experience of

mankind, based upon a thousand years of study, of experiments this way and that way, many of them errors but most of them right. We are the only one of the States that represents to-day the common law, — the great common law which adjusts itself to needs. What shall we do in view of that thing which overwhelms us, the prospect of the conditions after the war? This I have decided finally for myself. The Massachusetts judiciary is the rock, all else is shifting sand; it is the ship, all else is open sea. [Applause.]

Mr. ANDERSON of Newton: Although I had come to a decision against the election of judges before entering this Convention, I approached the matter of their appointment with an open mind, and ventured on Friday to suggest a real discussion on the question for the information of those of us who had not made the topic a special subject of study. The passion, the extreme statements, and especially the naming of judges in the ensuing debate, certainly were regrettable; yet no judicially minded delegate would allow them to influence him an instant for or against the proposition of document No. 345, which, of course, must be judged on its merits and on its value to the well-being of the State.

Doubtless all the delegates take a just and solid pride in our Massachusetts judiciary. Of course, there may be incompetent judges here or there; possibly occasionally a corrupt judge; and this hardly can be avoided in a fallible world. But the high reputation of our bench should not blind us to real faults in our judicial system, and one of those faults is that there is no practicable way of getting rid of incompetent, impossible and, especially, aged judges, who, through childishness or obstinacy, refuse to retire after they have outlived their usefulness. It is practically and morally impossible to proceed to the impeachment of men of high character, some of whom have rendered years of good service, because they now no longer are fit. So nothing can be done and unworthy expedients become almost necessary to meet an almost impossible and sometimes sordid situation. The question is: What can be done to remedy this patent evil?

The proposition which is before us, No. 345, solves the problem, first, by proposing that the judges of the lower courts shall be appointed for a term of seven years, so that at the close of each term judges who have ceased to be useful may be dropped; and, second, by prescribing an age of compulsory retirement for all judges.

There is no doubt in my mind that these provisions would meet the situation and remedy the evil; but the question arises whether they would not create other and worse evils, whether the cure is not worse than the disease. The first argument against the proposition which has weight with me is that it is hard enough now to get first-class men for judgeships on life tenure, and that making a judgeship less desirable surely would give us an inferior set of men on the bench. But to this it should be replied that a good judge almost undoubtedly would be reappointed. No Governor in this State would care to create the precedent of cutting off the services of a talented and faithful judge. Even in New York State, where judges are elected, the Bar Association often has been able to secure the reëlection of the best judges, and indeed their renomination on a non-partizan ticket. Surely the Bar Association of Massachusetts would be equally successful with a reappointment by the Governor.

With this prospect, and with a proper raise of judicial salaries and a proper system of pensions, it might not be impossible to secure as good a class of men as now. Even if not reappointed, the prestige of having been a judge would open many a door to the middle-aged man who was stepping down from the bench. This is the common experience in States which have limited judicial terms.

But, it may be said, admitting the evil, why not let well enough alone? This is the old conservative cry, with which I have little sympathy. If a probably safe and effective remedy can be found, let us try it. This is the soundly progressive attitude.

But a far more serious objection was raised by the gentleman from Quincy (Mr. McAnarney) Friday afternoon. He took the case of the corrupt, — he meant the corruptible, — judge, and told us that the selfish desire for reappointment would mingle as a motive in all his decisions. He might have added that a judge often is called upon to render unpopular decisions, decisions demanded by a state of the law with which he personally has no sympathy, but which he has no right to alter or publicly condemn. Serving in a quasi-judicial capacity last winter, I was in exactly that situation, and I cannot deny that for a moment I was tempted to do the popular rather than the right thing, especially as I could not explain. When we consider that on this supposed decision might hang not only the career but the livelihood of the judge, we can see easily that a man morally weak might succumb to the temptation to side with the crowd in the hope of reappointment, rather than to do his sworn duty.

I have gazed upon almost all of the most noted works of the sculptor, but none ever impressed me as did the masterpiece in the Palace of Justice in Brussels, now significantly made a barracks for German soldiers. It is a group representing in an entirely original manner the idea of Justice. In the center, in modern robes of office, sits the judge, a modern man. The figure is spare, the face thin, the features intellectual, refined, sensitive, firm, strong. On one side there stands, looking down at the judge, a Greek female figure, the law. In one hand she holds the statute-book. The finger of the other hand points to a sentence written on its page. Her face is calm, sure, majestic. On the other side stands a poor woman, in shabby clothes, clasping a sickly babe to her bosom, imploring the judge's attention to her plea. The face of the judge is the center of interest. He looks neither to one nor to the other, although he hears both. Lost in thought, he gazes far away into the distance. In him struggle for mastery the woman and the Law, Mercy and Justice, the right of the one and the rights of the many. No wonder the face is grave, for he must balance heart with brain, favoring neither one nor the other, striving for that synthesis which alone can be justice and yet in the end giving a concrete decision. This is the eternal antinomy, the despair of philosophers, the deepest mystery of the cross, and yet the reality which all men confront, and which the judge must decide practically in each particular case. That face of the judge in Brussels seems to me the finest human face into which I ever gazed. It combines the tenderness of the woman and the strength of the man, gloriously intellectual and appealingly human, and without a thought of self.

Shall we put the thought of self into the judge's heart and the judge's face? For one, I cannot bear to do it. But that is not all.

How shall we keep the look of sensitive sympathy with the poor in the judge's face, or put it there if it is not already his? And that question is just as important as the other. What the gentleman from Boston in the fourth division (Mr. W. H. Sullivan) said Friday morning has in it too much of truth. The judge too often associates with only one class in the community. Of all men, he cannot afford to do that. He, of all men, should have the broadest knowledge of how other men live and think, and the deepest sympathy with them. Let him associate with the poor man, the ignorant man, the common, decent citizen of slender means, the man who works in the factory and on the railroad, and let him know their outlook and their interests as well and as sympathetically as he knows the intricacies of our great financial and commercial world. Then will he be a judge indeed, the man to whom all, rich and poor alike, can look, not only for justice but for understanding.

Would reappointment by the Governor or election by the people make this sort of judge? I sadly answer that I fear not. Experience in other States seems to confirm my fears. And that means that it appears to me, on mature reflection, that we shall find no complete salvation, and more danger than safety, in a limited term for judges. The Convention often reconsiders its action, and I beg the indulgence of my fellows if I reconsider my purely tentative opinion of Friday.

What, then, is the remedy? Retain the clauses in the proposition which provide for compulsory retirement at a certain age. This will clear up two-thirds of the difficulty. And as for the rest of it, the only solution is good Governors, — Governors who belong to themselves and no one else, who carry their sovereignty under their own hats; men of sense, wisdom, insight and sympathy, who can be frightened neither by the interests nor by the professional labor leaders nor any other group, who want nothing except the good of the Commonwealth and justice for all. Such Governors will appoint the right kind of judges, and that is all that can be said, it seems to me.

Consequently, I move to amend No. 345, the substitute before the House, so as to read:

The Legislature shall have the power to establish an age for the compulsory retirement of judges.

I realize that by that we should lose a great deal. Suppose the compulsory age was seventy. A great many men of seventy-five or eighty are doing their very best work. And yet, on the whole, we should gain by it. That has been proved by the experience of the colleges of this country. A great many of them now have this compulsory age limit. They know that they lose a good deal, but they have come to the conclusion that they gain more than they lose. At least, we should not have the difficult and sordid situations which now arise occasionally in our State and which really are more or less of a scandal to it.

Mr. Paul R. Blackmur of Quincy moved that the proposed substitute draft (No. 345) be amended by striking out all after line 2, and inserting in place thereof the following: "The Governor, by and with the consent of the Council, may retire any judicial officer because of advanced age, mental or physical incapacity."

Mr. Blackmur: The resolution will then read:

Resolved, That it is expedient to amend the Constitution by inserting the following:

The Governor, by and with the consent of the Council, may retire any judicial officer because of advanced age, mental or physical incapacity.

I have listened with the utmost attention and with a great deal of sympathy to much that has been said by the proponents of these measures; but, sir, I am convinced after due deliberation that the only real grievance that has made an impression upon my mind is that portion of the debate which has dealt with the question of the retirement of judges mentally and physically incapacitated. The present method is very cumbersome and very difficult, and the instances which have been pointed out here well illustrate that difficulty. The bargaining with two judges, as we have been told, to secure their retirement, certainly should not occur again for want of a simple method of retirement.

Now, this is a very simple and efficacious manner in which to deal with the whole question. Do not forget, gentlemen, that the Governor, elected as he is here in Massachusetts, the servant and agent of the people, is the most responsive and responsible agent that you could have to make the retirement, a man whose every act is constantly under observance and examination. He would not remove arbitrarily under this provision a judge who was sound mentally and physically. He is elected every year by the people, he gets his mandate from the people, and he is in a position to deal fairly and squarely on the question of whether or not a man should or should not be removed for advanced age, mental or physical incapacity. It may be that it is desirable to further amend the resolution by making some provision as to pensions, or possibly as to a hearing; but I am perfectly satisfied that all those matters can be dealt properly with by the Legislature or at a later stage. However, this initiates a broad general principle, which is this: That if a judge becomes incapacitated by age, mental infirmities or physical infirmities, some one, — and who better than the Governor, with the consent and advice of the Council? — should and can remove him.

Mr. Dennis D. Driscoll of Boston: The words of the amendment introduced by the gentleman in the second division from Quincy I believe give more power to the Governor and the Governor's Council, where all the trouble exists on this political propaganda, and which is at the bottom of all the criticism that comes on the judiciary of this Commonwealth. I believe if the delegates of this Convention will go back only for two years, and perhaps one year, they will recall where the Governor's Council may have held up the Governor to have a certain lawyer appointed to a certain part of our judiciary in this Commonwealth, and perhaps Suffolk County. While from my experience in life I have the highest confidence in the judiciary of this Commonwealth, I am a strong believer in the election of judges. The political propaganda interferes with the judiciary of this Commonwealth, and the appointments are the cause of its trouble; perhaps with the action of some judges in their decisions on the question of labor *versus* capital, and, through that, on the great injunction proposition. I am one of the few laymen who believe that the Legislature will be the place to straighten out the whole subject.

I have had some dealings with the courts, more especially in Suffolk County, and I find that the poor man gets a good square deal in a trial, although some men on the bench may make a mistake. Will the

question of appointing judges for seven years or ten years stop the women with short hair and the political propaganda of the Back Bay and the political machinery of this Commonwealth from interfering with the Governor and the Governor's Council on the appointment of the judiciary, which brings about the trouble and the criticism from the people in this Commonwealth? I am not going to name any judges. I put in fifteen years around the State House representing organized labor in the interest of legislation, and I have seen some actions of the Senate in the past. In my younger years they used to talk about gravel trains that ran through the State House without an engineer or fireman. But when men vote against the interest of the people we sometimes charge or criticize on the public platform that their reward was an appointment to the courts of this Commonwealth.

If you will go back you will see a few remarks I made on the initiative and referendum with reference to that same thing. The working people of the Commonwealth feel that way yet. We want all that kept away from the court. It is true we men who represent labor talk on the public platform about the power of the corporations, which is not so strong perhaps as the power or political weight of the interference with the judiciary in this Commonwealth. I believe we should take all that away from the Governor and the Governor's Council. Let the people of this Commonwealth elect a commission on the judiciary and let the Governor make appointments to that commission, and it would not be controlled by any one political party by law, and let the commission report back to the Governor, recommending as to the ability of the men who have been mentioned for that position. That will kill the political machinery that interferes with the judiciary of this Commonwealth.

While it may be true, — you men claim to know it, you have told me so in my years of life, — about the ability of many men placed on the courts of this Commonwealth, and about the interference of the appointee, I do not know, but I do know that two years ago a man in Boston, a great attorney, who had had much experience in handling finance, led us to believe that one of the leading political office-seekers of this Commonwealth, backed up by the Governor's Council, interfered with the appointment of that judge; and whether it be a juvenile court or Superior Court it brings about the criticism of the laymen on the appointees of the courts of this Commonwealth.

I say to the delegates of this Convention, the appointment of the judges would not prevent the trouble that exists to-day. The political propaganda will go on with the appointees. The election of the judges is a question which the people will have something to say about. Now, gentlemen, lawyers and delegates of this Convention, who are so afraid of the people, why not change the Constitution and have a commission on the judiciary who shall be elected by the people, and it will be only a majority on the commission of five who shall have power to recommend as to the ability, etc., of the appointees made by the Governor. Take that authority away from the Governor's Council, and you prevent interference with the Governor's appointments. And with all these men on the judiciary in this Commonwealth, I want to say to the delegates of this Convention in my years of life I have had much to do with the judiciary. I am proud of the action of the judges of the municipal court, and I believe in advance-

ment and promotion in life; and after that experience, when they have ability to sit there, they could be promoted to the office of the Superior Court. If they are not fit to sit in the municipal court they should not sit in the Superior Court.

As I say, we know there is criticism, the criticism of the working people, and there is interfering. I am opposed to any man who sits on the Supreme Judicial Court, or the Superior Court, practicing law outside of his work in court. I am in favor of giving him a higher salary. I am opposed to any judge ever saying: "I cannot sit on a case to hear a man, no matter whether he is a working-man or a wealthy man or a poor man, because I am attorney for the side of the plaintiff." We want them free from everything. The salary should be the highest. I am a little bit nervous about the proposition of the seven-year term. It would not prevent the political propaganda of the people; it would not interfere so much with the appointment of the judiciary as of the other commissions of this Commonwealth.

I know what I am talking about when I make this statement, but that is a step in the right direction. I am one of the men who can be converted to the short term appointment of the judiciary, but as yet I am strongly in favor of election. I am not going to criticize any individual. I want to say this, and I want to say it for the public as a delegate: In my dealings with the courts of Boston, the poor man gets a good square trial and a fair deal, and the judges are human and have hearts. While we may disagree with one of them personally we have got to give them credit for their good justice and law.

By that appointment for seven years the political machinery would be just as bad. I am willing to plead guilty with the lawyers. On the convention floors and in our meetings, — perhaps a judge may have decided against you, and we must admit the truth, — we would be against reappointment for that action. And that is true of every organization and any people who are interested in these propositions. I am not ashamed to say it. That would be the action on the appointment of the judges. It would be the same with the lawyers. It would be the same with the Republican party and the Democratic party or any other political party, where that position is about to be filled.

I hope the amendment presented by the delegate from Quincy will be defeated. If there are any changes made besides the one on the appointment of the judges for seven years, if the attorneys will consider that question of having a judiciary commission elected and honored by the Constitution of this Commonwealth, where every candidate's name will be presented to them for their consideration and returned with a favorable report of a majority of five of the commission before he shall be appointed on the bench, that method would be some improvement on the method of appointment of the judiciary that now exists in Massachusetts.

Mr. AYLWARD of Cambridge: I think the amendment of the gentleman from Quincy is good as far as it goes. It cures one point in the matter, but I believe that there is a great deal more in this matter than some men will admit here. It is unfortunate that all the courts are under the same rule. We have heard some criticism of certain courts, but one court of which there is the greatest criticism has not been mentioned at all, and that is the lower court. If the lower courts of our

Commonwealth did not come under this same rule, I doubt very much if there would be the support of this measure that there is among the people of the Commonwealth.

Fifteen years ago, when I was in the Legislature, there was a bill presented to prevent associate justices of the lower courts from practicing before their own courts. That was a measure that I was vitally interested in. For years I had seen in my own local court a man who had practically no practice before he was appointed an associate justice, and who succeeded, through practicing in that court of which he was a justice, in amassing a considerable amount of money. And how was it done? The presiding justice had not given him any special favors, but the people of the district, particularly the foreign element, felt because he was a judge of that court that thereby he might have a greater influence than some other lawyers.

The committee on the Judiciary, of which I was a member, the gentleman from Everett at that time being chairman of that committee, heard that bill, and with considerable interest; but finally it was found that in some cities and towns of the Commonwealth, or rather in some towns of the Commonwealth, the associate justice was the only lawyer in the town, and if he could not practice before that court he would have to go out of business; and such was the sentiment here in the Legislature that the bill was rejected.

That is a crying evil throughout the Commonwealth. Another evil is that there is no head to the lower courts. The Supreme Judicial Court has a Chief Justice, the Superior Court has a Chief Justice, and he determines in connection with his confreres what the rules of the court shall be, and also determines where they shall sit, and such other determinations as he is permitted by law to make.

But there is no head to those Justices of the lower court. In my city of Cambridge the court opens promptly at nine o'clock, and every case is taken up in its order. But go out to some of these towns here, be called in the night, perhaps in the middle of the night, to go out and defend somebody, and with great trouble and with change of cars you get out there at nine o'clock. No judge. Half-past nine; no judge. Ten o'clock; nobody. He comes in when he pleases. What is going to remedy that? He is absolutely independent of the people of this Commonwealth. He cares nothing for the lawyers' time, he cares nothing for the business man's time, he cares nothing for the doctor's time, who appears in some little case that is of no great advantage for him, and prevents all of these people for hours from attending to their professional duties or business.

I speak of those things because there are many lawyers here who know them, but for some reason they do not see fit to state them. There are grievances. I do not know as any of these measures will remedy them, unless it is the election of judges, to which I am not altogether opposed, but I believe that proposition has no chance, as was proven by the vote in this body. I believe the next best thing is the appointment of judges, and I think No. 345 goes a considerable distance in that direction. I know the conservative element say that they will not interfere with the Supreme Judicial Court and the Superior Court, but that those Justices will hold their present offices for the term of ten years from this time, and thereafter be appointed.

Politics! The gentleman from East Boston (Mr. Maguire) showed,

it seemed to me, how much politics there was in the present situation. Politics and politicians! Who is not a politician who has any interest in the affairs of life, in public questions? How many judges who have been appointed to the bench were not politicians? How many of them were not district attorneys, and sought election from their constituents? How many of them were not city solicitors? Politicians! It seems to be the cry of every conservative who wants to oppose some radical measure or some progressive measure to attack it with the word "politics" or "politicians," and so throw it out of court.

There is as much politics in seeking an appointment as judge as there would be under a system of the election of judges. I think it was unfortunate the other day, very unfortunate, that any of the judges' names were mentioned here. With regard to one of the judges whose name was mentioned here, I desire to say that I had observed nothing to deserve any such criticism, and I have observed, too, that he was one of those men whom my friend from Westfield (Mr. Kneil) could not have referred to when he spoke about it. It was unfortunate because, if there was any reason for criticism of that particular judge, I am satisfied there were others who were not mentioned who were just as deserving of it; so it was unfair to the man who was criticized. There are lawyers in this Convention who could stand up here, if they chose, and name other individual judges, — not of that court, possibly, but of the lower courts, — and this criticism of the lower courts will continue until this system is changed.

It has been stated, too, on the question of the election of judges, that it is almost impossible to remove a judge. I guess none of us can remember when a judge was removed in Massachusetts, — not because there were not many who ought to be, but because of the difficulty of removing them. In my own city, before I was admitted to the bar, there was a judge of the lower court of whom everybody was sick and tired. There was nobody to defend him. There was no reason why he should stay there; and as has been indicated, the only way to get rid of him was to abolish his court. There was a judge in another city not far from mine, attached to mine. Why, he was a standing joke among all the lawyers of the Commonwealth, but he was in a strong Republican city and nobody ever interfered with him, and he died; and if he had not died, as far as I could observe, he would be there yet; unfit, absolutely, both in his personality and in his lack of knowledge of the law.

Those are some of the abuses. I should be glad to vote for a measure that would apply only to the lower courts, but I shall vote for this one because it embraces some of my views. It does not go any farther than I want; it might well go farther, and I still would vote for it.

I am not one of those, although I have the greatest appreciation for the courts of the Commonwealth, who believe that they are the only fit courts in this great Nation of ours. I believe the courts of other States, both with the limited appointment and with elections, stand just as high in interpreting the laws of their Commonwealths and the laws of the land as our courts do. I am very proud to be a citizen of Massachusetts, and proud of our courts; still I do not think that this measure, the measure under discussion, will interfere in any way

with the high character of our courts or with the administration of justice. I believe the people of the Commonwealth know of those abuses of which I speak, some in some courts and some in others, and I think they are ready for a change.

As I said before, and as has been said by others, I think the best manner would have been not to have stricken from the I. and R. amendment that language which referred to the courts, but to have permitted it to remain there, and, as the people adopted it, to have provided that the Legislature then, in their wisdom, should draft a modern law, a law somewhat similar to some of the other States; and not assume because our law was drafted a hundred and some odd years ago, and because there had been no change, that thereby there should be no change.

I am satisfied that the people want this. I myself am satisfied that there are grievances, serious grievances, and unless something is done here, — and now there is no opportunity so far as we can see ahead to change the present method, — unless the present method is changed, dissatisfaction will continue, and there will be no hope for those who believe there should be a change; and the more of those things that are piled one upon the other, the greater will exist the dissatisfaction in the people's minds and that unrest which is the danger of all governments. [Applause.]

Mr. Edwin U. Curtis of Boston moved to amend the amendment moved by Mr. Blackmur of Quincy by adding at the end thereof the words: "and the General Court may provide pensions for judges so retired."

Mr. Curtis: I understand the amendment which I have offered meets the approval of the gentleman from Quincy (Mr. Blackmur). I am opposed to the original resolution, and to the amendment offered by the gentleman from Boston, but I long have been of the opinion that there is not a practical method of relieving the State from a judge who, through incapacity, is unable to properly perform the duties of his office. There are two ways; first, by impeachment. Of course every gentleman in this Convention knows, from the history of this Commonwealth, that in order to impeach a judge you must have an almost absolute case. Impeachment very seldom has succeeded anywhere. The other method provided in the Constitution is for an address to the Legislature, which means that with a majority vote of the Legislature the Governor, with the advice and consent of the Council, may remove the judge.

I am not so much concerned with the removal of judges because they are unfair or improper men, but I am interested in retiring those judges who, from mental or physical incapacity, are not fit men to sit upon the bench. And without using any names, we all know of such cases.

But I do not believe that where a man has been a good judge, has served fifteen or twenty years and has a family dependent upon him, that we want to pass any amendment giving the right to the Governor and Council to remove him without giving him something in the way of a pension if he needs it; and as you all know, many of them do need it, and will need it in the future. That is why I have offered the amendment to the amendment of the gentleman from Quincy.

Now, it may be said that it is not safe to leave it to the Governor

and Council. Well, in every business, in every walk of life, you come to the point where somebody has to decide something; and if you cannot leave these things to the Governor of the Commonwealth, elected by a majority vote of the Commonwealth, with the approval of the Council, elected from the different districts, then I say that there is no way to get rid of a judge who mentally and physically is incapacitated.

It may be said, too, that if the Governor is of one political party and the Council is of the same political party, that in order to make a place for a friend they might remove a judge. But public opinion counts in this State, and I do not believe any Governor who ever sat in the Executive Chair would dare to remove a man who ought not to be removed, and I do not believe that any Council elected ever would dare to approve such removal. I still have faith that the people of this Commonwealth would not elect a man to that position who would exercise that function improperly; and if he did, Mr. President, the people would get rid of him at the very next election; there would be no question whatever about that.

Mr. BLACKMUR of Quincy: May I ask consent to accept the amendment offered by the gentleman from Boston (Mr. E. U. Curtis)?

The PRESIDING OFFICER (Mr. Cox of Boston): Mr. Blackmur of Quincy accepts the amendment offered by Mr. Curtis of Boston. Is there any objection? The Chair hears none.

Mr. ANDERSON of Newton: I wish to call attention to the fact that the amendment offered by the member from Quincy (Mr. Blackmur) and my amendment are not antagonistic to each other, and that I hope that both will be carried.

The PRESIDING OFFICER: Does the Chair understand Mr. Anderson of Newton withdraws his amendment?

Mr. ANDERSON: What is that?

The PRESIDING OFFICER: Does the Chair understand that Mr. Anderson of Newton withdraws his amendment?

Mr. ANDERSON: I do not wish to withdraw my amendment. I wish to say that the amendment proposed by the gentleman from Quincy (Mr. Blackmur) and my amendment are not antagonistic to each other; they simply supplement each other. I am in favor of both and I hope the Convention will be in favor of them both.

The PRESIDING OFFICER: The Chair will state that the amendment accepted by Mr. Blackmur of Quincy is antagonistic to the amendment offered by Mr. Anderson of Newton, and that if the amendment offered by Mr. Anderson of Newton prevails it will shut out the amendments offered by Mr. Blackmur and Mr. Curtis of Boston at this stage.

Mr. LOMASNEY of Boston: I should like to ask the gentleman from Quincy (Mr. Blackmur) if these words "judicial officers" do not go too far. The amendment says "judicial officers". What is a judicial officer? Is a master in chancery a judicial officer?

Mr. BLACKMUR: In answer to the gentleman, I would say that I used the language of the Constitution as it was, as is found in chapter 3, article 1, which reads:

> The tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices during good behavior, excepting, etc.

Therefore I used the same language as is found in article 1 of chapter 3.

Mr. LOMASNEY: My point was to ascertain if you wanted to give the power to the Legislature to give salaries and pensions, as I believe they could, under that resolution, to masters in chancery.

Mr. POWERS of Newton: I desire to offer what might be called a few observations on the subject of the judiciary which are the result of more than forty years of practice at the bar. I assume that we all seek to accomplish the same purpose, and that is to secure and retain the best judges on the bench; and any system that accomplishes that will accomplish the desire of this Convention.

There are three systems that have been under discussion while this proposition has been under consideration. One is what is known as the life or the good behavior system, through appointment. One is the election of judges by the people for a limited term. The other is the one which we are considering now, and that is the appointment by the executive for a limited term. Each of these systems, to my way of thinking, has its advantages, and each its disadvantages. There is no one that is perfect. There is no one that is absolutely imperfect.

I noticed the other day that some one said that the election of judges had been a failure, but that is not true. Go to those States where judges of the higher courts have been elected by the people, and nine lawyers out of ten who practice before those courts will say that the system has been a success. Go down into Maine, where they have the appointment for a limited term of years, and nine lawyers out of ten will tell you that the system in Maine has been an eminent success, and that no lawyers, or very few lawyers, desire to have a change in it. Come to Massachusetts, and I think it is fair to say that three-fourths at least of the lawyers will say to you that our system of appointing judges during good behavior, which is equivalent to life, has been an eminent success. In other words, my experience shows that where a system has been used for a long period of time and has been reasonably satisfactory there is not a desire for a change. Of course this system of election of judges has not any considerable support in Massachusetts, in my opinion. No one desires that the selection of judges should have the element of politics in it beyond what is necessary. Any one of these systems that we may select will have more or less of the element of politics in it. It is true that an appointment such as we have in Massachusetts has more or less the element of politics in it. Of course, when you get to the question of election, that has the element of politics in it, as well as the selection of judges for a limited term of years.

The proposition which comes before us at this time is the proposition of changing the system which we have in Massachusetts and adopting a system similar to that which they have in the State of Maine. I notice that this proposal which is under discussion provides that none shall be appointed who has not arrived at the age of thirty-five years, — I am rather surprised that that language should have been used, — and that none shall be appointed who has not practiced law for at least ten years. Are you aware, Mr. President, that if that language had been in the Federal and the State Constitutions of this country Joseph Story could not have been appointed to the Supreme

bench, or that Judge Colt, who served with so much distinction for many years upon our circuit bench, would not have been appointed, or that William H. Taft, who served with distinction upon the circuit bench in the district which included Ohio, could not have been appointed? I believe in the appointment of young men upon the bench. I believe in allowing a young man to develop upon the bench. Some years ago I went to the Governor with a suggestion that an attempt should be made to establish a policy in this Commonwealth of selecting young men who gave promise, and build up in that way a strong judiciary in the Commonwealth; and I was very much pleased when I noticed that in these recent appointments which have been made this year and last year by the Governor of the Commonwealth, he has selected comparatively young men, and I think it is but fair to say that in these selections there has been less politics than in the selection of any judges in Massachusetts during the last fifty years. I happen to know that of two who were appointed neither one sought the place, and his name had not been suggested to the Governor, and in those two cases they asked to be excused from serving upon the bench and finally reluctantly consented to give up what promised to be a successful and brilliant career at the bar for the purpose of serving the public. And so it seems to me that we are having less politics in the selection of judges to-day than we have had for many years past.

But that is not the question that is before us, gentlemen. Will it improve the system in Massachusetts if we select judges for limited terms? Of course the advantage that you have in the selection for a limited term is that you can get rid of judges who are not satisfactory to the public and the bar. Down in Maine they claim that that system has had many advantages, in three ways at least. First, it keeps the judge on his mettle to do good work in order that his reappointment may be made; in the second place, the lawyers say that it makes him more courteous to the bar and more courteous to the public; and in the third place, if it turns out that he is disqualified mentally or physically for the proper performance of the duties, he can be displaced.

It does not follow, as every lawyer in this Convention knows, that because an attorney has been successful at the bar he will become successful on the bench. Nor does it follow that a lawyer who has not been particularly successful at the bar may not develop into a very strong judge upon the bench. I have in mind two judges who were on the bench when I came to the bar in this State who had been very eminent as practitioners, and neither one was a success upon the bench. One was partizan, growing out of his habit of taking one side or the other of a case during the years of his practice; so much so that within ten minutes after the case opened he had to take one side or the other. He was a dominating character, a man of great strength and a man of great power, and he could unduly influence the jury. And so we used to say when we went before this judge: "Whether I win or lose this case will all depend whether the judge takes to my side or not." The other judge to whom I refer was a man who was exceedingly discourteous to lawyers. He was dominating. Now, my belief is that if you had a system by which these judges would come up for reappointment at the end of certain terms of years you would find that it would have a most salutary effect upon the bench.

And yet we are bound to say here in Massachusetts that under the system which we have to-day we have developed the strongest court of any State in the Union, — I mean our court of last resort, — and I agree with what my friend from Westfield (Mr. Kneil) said this morning, that no one wants to change the system of the appointment for good behavior of the members of the court of last resort. What we seek to do is to change what may be called the system of appointing *nisi prius* judges, and I am inclined to believe that there is a strong argument in limiting the tenure. I believe that a limitation of the tenure would result in this: That any judge who was qualified entirely for the position would receive a reappointment as long as he desired to sit on that bench. That has been true in Maine, I am told, and there has been only one case in that long history in Maine where politics has prevented the reappointment of good judges. Those of you who recall some of the eminent names that have been on the Maine bench will recall names of strong men, and you also will agree with me that the decisions of the Supreme Court of Maine rank well with the decisions of any court in the Union. And in no case, with the exception of one, I am told, has a good judge failed of a reappointment by the Governor when his term expired. In several cases where the judges showed that by temperament they were not fitted for the bench, and where the lawyers have gone to the Governor and said: "That man can never develop into a good judge," the Governor has refused the reappointment, — that is, the renewal of the commission.

Now, I confess that I am seriously in doubt as to whether our present system is as good a system as the system of limited tenure for what may be called the inferior courts, and at this present moment I have not decided whether I shall vote for this proposition or whether I shall vote against it. I throw out these suggestions at this time in order that you may consider whether the appointment for a limited term is not better than the appointment for life. Of course when you come to the question of election of judges, while it has worked pretty well in other States for the higher courts, it has worked very poorly in the lower courts. The Court of Appeals in the State of New York in its decisions ranks well with the courts of the other States. The same is true of Pennsylvania, and of Ohio, and of Wisconsin. In Pennsylvania they held their Constitutional Convention in 1851, if I remember correctly, and decided to adopt the elective system for ten judges of the Supreme Court, and the two parties agreed that each should nominate five to constitute that court, and out of that election grew the strongest court that Pennsylvania ever has had, with Jeremiah Black as the Chief Justice of that court. But when you get into the cities of Pennsylvania, where they elect their inferior judges, or into the large cities of the State of New York, you find an entirely different class of men. And if we were to have here in Massachusetts, in Boston, for instance, the election of judges for your municipal court, instead of having a strong court such as we have to-day, you would have a most inferior court; you would have politics in it of all kinds and descriptions.

Mr. Blackmur: I should like to ask the gentleman if he includes the Superior Court in that designation of inferior courts, as does this resolution now under discussion.

Mr. POWERS: I do include all courts except the court of last resort. The court in which the lawyers are most interested is the Superior Court, which has become a great trial court, with numerous judges, before whom we have to try our cases and where we have to save our law. I am not going to undertake to criticize members of that court. I have had my share of troubles with judges, but I say that on the whole our system has given good judges to the Superior Court of Massachusetts. There have been exceptions, but those exceptions have been due to selections not mentally or temperamentally qualified for the position. I have seen some great men upon the Superior Court in my day, and I want to bring forward one man who stands out in my mind as the ideal *nisi prius* judge. I refer to Chief Justice Brigham. There was a judge who could try a case and you never could find out whether his sympathies ran toward the plaintiff or the defendant. But I have heard another judge after a case was finished say that the only disappointment he had was that he could not decide against both the plaintiff and the defendant. [Laughter.] And I remember once hearing a judge upon the Superior bench, and he is one of those to whom I already have made reference to-day, give this charge to the jury after a case had been tried in which undoubtedly there had been more or less perjury upon both sides. It was a unique trial and it was a unique charge, and this was the charge. He said: "Mr. Foreman and Gentlemen of the Jury: If you believe the plaintiff or any of his witnesses you will find for the plaintiff, and if you believe the defendant or any of his witnesses you will find for the defendant; if you don't believe the plaintiff and any of his witnesses, or the defendant and any of his witnesses, you will find for the defendant, the burden being on the plaintiff." [Laughter.]

I think that we have every reason to be proud of the judiciary of Massachusetts. No State has given to the Union decisions on great constitutional questions in the way that Massachusetts has done. Our court of last resort has stood as perhaps the first and ranks to-day as the first among the States of the Union. If I remember correctly, the judges of New Jersey are appointed; and every one will agree, at least all the lawyers will agree with me, that the decisions of the court of last resort in New Jersey rank with the best. There is one advantage, of course, in the appointment during good behavior, and that is it gives to the people an independent judiciary, independent and fearless, and that is exactly what the people demand.

I do not believe that there is any strong demand in Massachusetts for a change in our judicial system. I am frank to say that. I believe that the people generally are satisfied with our judicial system of appointment. However, if this Convention believes that there is a better system than the one which we have, and believes that it should be applied to certain courts, then of course it becomes our duty to recommend that system; but I will say now, as I have said before, that Massachusetts is well satisfied with her present system of judicial appointment; she is well satisfied with her courts, and there is no strong reason why we should recommend to the people a change in our system unless we are satisfied that the change will improve the selection and the retention of better judges than we have now. [Applause.]

Mr. BENNETT of Saugus: There may have been portions of this debate that I have not heard, but so far as I have heard it the proposition seems to have been made, and uncontradicted, that there were only two methods of getting rid of a judge who ought to be got rid of. Now, there is a third method, which, although somewhat cumbersome, has been resorted to several times in this Commonwealth, and that is to abolish the court, or to create a new court having about the same powers as the old and simply to abolish the old court for the purpose of getting rid of the judge. A recent instance which occurs to me I think was in Gloucester. There was a judge there who was unsatisfactory, and the police court of Gloucester was abolished, as far as I remember, and a certain district court of Essex County was created in its place, and a new judge was appointed. I think we owe our Superior Court to something very similar to that. In a general way I think I am right, although I may not be precise in regard to the legal particulars. We had in this State a Court of Common Pleas; we had no Superior Court. The Superior Court is merely a name. We could have a court of second instance, or another court of Common Pleas, or what not; it is simply a name. The Court of Common Pleas for some reason or other had made itself very unsatisfactory, and so it was abolished and the Superior Court was established in its place, in order to get rid of those judges.

The only instance, the only other convincing instance that I remember in my life, of inability to get rid of an apparently unsatisfactory judge, I think was in regard to a probate judge. It was to get rid of a probate judge who, — I know nothing about it, — was said to have become mentally incapacitated. That is the only well-authenticated instance within my memory of inability to get rid of a judge in Massachusetts.

Though the method of abolishing the court is clumsy, if there were a crying need of changing the judge, the people of this Commonwealth would not hesitate an instant to resort to that method. In the arguments I have heard in the corridor in regard to this matter the incident which has been brought up as causing some change of sentiment on this subject is the recent child labor decision in Washington. Well, I have not heard anybody argue that this proposition is to tend to abolishing the Supreme Court of the United States or changing the method of tenure of the judges. We all feel that our government never could have been made stable, as it is, had it not been for the Supreme Court of the Federal government. We never could have had the Constitution we have, we never could have made it effective, we never could have endowed the people with a deep popular love of the American Constitution, without the Supreme Court of the United States. Therefore, if your argument is that the child labor decision was somewhat absurd, it seems to me it was. It seems to me it is reactionary as a decision of the Supreme Court of the United States. But I do not think people are disposed to argue in favor of abolishing the Supreme Court of the United States, and therefore that argument in regard to the child labor decision falls to the ground.

I am a very strong believer in the initiative and referendum. I am a strong believer in the people. I am a strong believer in the closest possible touch of the people with the executive and legislative departments. But I feel that since we are tending so strongly in

that direction we should do nothing to lower the standard of the judiciary, and I am in favor of letting it alone precisely as it is; and if there is a position so irritating and so unsatisfactory that we need some remedy to get rid of a judge besides the present unsatisfactory methods or inefficient methods of address and impeachment, you can abolish the court and create a new one in its place. My impression is that the case of the court of Gloucester covers precisely the same ground. The police court of Gloucester was abolished and a certain district court of Essex County was created. It seems to me it is totally wrong to put this in the hands of the Governor, to give the Governor the right of appointment and the right of removal. It is wholly reactionary and wholly contrary to the methods we have been pursuing, and I hope the report of the committee will be accepted and the whole matter will be killed and the tenure of judges will remain as at present.

Mr. O'Connell of Boston: I desire, before taking up the subject under discussion, to thank the venerable Justice of the Supreme Judicial Court (Mr. Morton) and the members of the Judiciary Committee for the courtesy which they extended to me last Thursday when they endeavored to have this subject put over until to-day, because I had been unexpectedly but unavoidably obliged to absent myself from this Convention to try a jury case which had been suddenly reached for trial, the urgency of which required my presence. I had full confidence that any motion made by the former Justice, as chairman of the Judiciary Committee, in a matter of this kind would be honored quickly and willingly by the members of this Convention, and I was surprised to learn that his request was denied. May I at this time also say that any inferences which have been drawn which would intimate that I had been taken intentionally before the Court and detained there when this subject was up, because of any ulterior motive, are entirely wrong, because I feel that of all the judges of this Commonwealth, none would be quicker to relieve me from the necessity of trying than Judge Perley Hall, who was presiding in the session where the case was being heard which I was representing, and who offered to excuse me on Friday when he heard that this subject had been reached for discussion. My client's interests, however, would have been sadly jeopardized if the case had been continued, as it would have gone over until next fall, and my duty to him compelled me to finish the case. I simply make this explanation in order that my position before this Convention may be understood clearly.

I regret very much that I was not here, because I am not familiar with the manner in which the subject has been discussed, and further, because I believe that had I been here, an arrangement could have been made by which all the various measures relating to the judiciary might well have been grouped into two classes on which votes might have been taken which would indicate clearly the attitude of the members of this Convention, viz.: First, those that related to the elective system, and, second, those which advocated the appointive system. This, of course, is impossible now, but I wish to put before the Convention my views on these two systems and the reasons why I have a sincere conviction that a change is necessary from the present system under which our judiciary is operated.

As a member of this Convention, and as a practicing member of our bar, I am not the least afraid of the elective system. I have no quarrel with our courts, and I address myself to the subject with no rancor or ill will. My highest desire concerning our courts is that they shall be held in reverence by our people at large, and this can be done only by commanding the respect of lawyer and layman. I believe that many of our judges now endeavor to merit such a reverence, although I believe that many of the best lawyers in this Commonwealth join with the great body of our citizens in not having the very highest respect which always should surround our courts, and that this want of respect is due entirely to the imperfection of the present system. As a member of this Convention and as an attorney in this Commonwealth, I am not blind to these imperfections; and being sworn to bring forth the best for the people of this Commonwealth at this time, I address myself to this subject.

Now let us see what confronts us as to the history of the judiciary in Massachusetts, as to whether or not there ever has been any disposition to have a system other than an appointive system for life, such as we now have. Members say: "Oh, there never has been any sentiment for an elective system in Massachusetts, and the lawyers won't have it." Well, of course, it is a well-known fact that lawyers do not desire to fight the courts. Most of them decline to do so. Many members of this Convention who are members of the bar have indicated to me their caliber when they have said: "Why, O'Connell, I believe you are right, but I would not dare follow you on that subject, because I know that the judges in some way would get back at me." Now, I have no such fear of the judges or the courts. I am not flying in their face, nor am I insulting them, nor do I intend to reflect upon any of them personally. I simply am addressing myself to this subject from the broad, clear principle that the people have a right to choose their judges. I will put aside for the time being all questions of the many imperfections of individual judges that could be pointed out to this Convention. I feel, however, that the subject is worthy of a higher consideration than that of the failure and imperfections of particular examples now sitting on our various benches in this State.

How did Massachusetts come to make this great exception to the principle on which this great Republic is founded? The Declaration of Independence, that declared our freedom and announced the doctrine on which we separated from Great Britain, never should be forgotten, particularly in a Constitutional Convention in Massachusetts. Let me read it to you:

> We hold these truths to be self-evident, that all men are created equal, and that they are endowed by their Creator with certain inalienable rights; that among these are life, liberty and the pursuit of happiness, that to secure these rights governments are instituted among men, deriving their just powers from the consent of the governed; that whenever any form of government becomes destructive of these ends, it is the right of the people to alter or to abolish it and to institute a new government, laying its foundations on such principles and organizing its powers in such form as to them shall seem most likely to effect their safety and happiness.

Practically every State in this Union has repeated this fundamental doctrine, and our own annunciation of it as a principle of Democracy is found in our Constitution in Article 4:

The people of this Commonwealth have the sole and exclusive right of governing themselves, as a free, sovereign and independent State; and do, and forever hereafter shall, exercise and enjoy every power, jurisdiction and right, which is not, or may not hereafter be, by them expressly delegated to the United States of America in Congress assembled.

And in the fifth section:

All power residing originally in the people, and being derived from them, the several magistrates and officers of the government, vested with authority, whether legislative, executive or judicial, are their substitutes and agents, and are at all times accountable to them.

I do not believe that the courts of this Commonwealth are sovereign. I believe in the fundamental principles announced in the Declaration of Independence and in our Constitution, that the people of this Commonwealth are the sovereign power; and the people of this Commonwealth, being the sovereign power, have at all times a right to say who their judges shall be, and those judges in turn shall be accountable at all times to the sovereign power of this Commonwealth as it is laid down in our own Constitution.

It may well be in order at this time to inquire as to how the anomaly of an appointive system for life for our judges, which prevails in this State, was brought about, and I desire to call to the attention of the members of this Convention the various features in the journal of the Convention of 1780. Members will bear in mind that the first Constitution submitted in 1778 was refused by the people of the Colony because it did not have a Declaration of Rights, and the town of Boston then presented one of the most remarkable expressions of opposition when the whole town voted unanimously against accepting the proposed Constitution. At the next Convention, in which the Constitution of 1780, that under which we now operate, was adopted, let me call attention to a few things that did happen in connection with the adoption of a life tenure for our judges, which may be very helpful in guiding us and future generations as to whether or not it was understood clearly at that time just what was being done and what the result would be and how it was accomplished. Much misunderstanding will be cleared up if the facts are borne clearly in mind and if members could but take the time to carefully go into the whole subject.

According to the journal of the Constitutional Convention of 1779–1780, there were present on November 6, 1779, but 113 members out of a total membership of close on to 400. I am uncertain as to the exact number of members to which the Convention was entitled, but I judge from the writings of John Adams that it was close on to 400. On that same day, namely, November 6, there began the debate on the question of the judges, and with this very small number, by a majority vote, with less than a third of the Convention present, there was passed the vote giving the judges of the Supreme Judicial Court of this Commonwealth tenure during good behavior. To be exact, the vote was 78 out of 113.

On November 8 the debate was renewed and the question taken up in reference to the classes of judges inferior to the Supreme Judicial Court, such as our Superior Court of to-day, which in those days was known as the Court of Common Pleas, and the question "whether it is the opinion of this Convention that the judges of the Courts of Common

Pleas in this Commonwealth ought to be appointed to hold their offices during good behavior" was put accordingly and passed in the negative, by 57 out of 119.

So the gentlemen of this Convention will realize that the first expression of the opinion of the Convention of 1780 was that judges inferior to the Supreme Judicial Court should not hold for life.

I have been reading from pages 42 and 43 of the journal of that Convention. It is very evident from these two votes passed with substantially the same number of members present, there was a wide difference of opinion as to the doctrine of a life tenure for the judges of the different classes, the pronounced opinion being that the Supreme Judicial Court should hold for life and that all inferior judges should not have that tenure. The question subsequently was reconsidered, and on February 11, when there were only 59 members present, the Convention discussed the motion. It is found on page 103 of the journal, the question of the tenure of the Superior Court judges or, as it was known then, the Court of Common Pleas. The exact motion then was that these judges were to be "appointed by the Governor out of a nomination list to be exhibited by the judicial offices of the county, namely, the Justices of the Common Pleas, and should pass subject to a negative of the Governor and Council." Gentlemen will notice the significance of this motion concerning the tenure of our Superior Court judges, and students and advocates of the life tenure well may pause and ask why it was that in those days this suggestion was made seriously, if there was any pronounced feeling about a life tenure for all holders of judicial office. In my mind, it is probably one of the most scientific suggestions that ever has been made which would insure fitness in an appointive judge, because the men who would be called upon to make his nomination certainly would be the best qualified, because of their own knowledge and observation, to decide as to the ability, knowledge of the law and the essential qualifications necessary to make a good *nisi prius* judge, while the provision of a veto by the Governor and Council guaranteed to the people that the judges would not establish an oligarchy among themselves distasteful to the people.

The journal goes on to say on February 12 that this question was "largely debated" and was passed. Similar motions were passed on the same day to the same effect, concerning tenure of judges of the maritime courts, judges of the probate court and the trial justices, then known as justices of the peace. This question was reconsidered again and on Wednesday, February 16, it was decided finally that the judges of the inferior courts should hold their commissions during good behavior, with only 86 members of the Convention present, 62 members voting in the affirmative.

It is evident from what I have shown to you that there was a decided difference of opinion as to the tenure of these judges; and if we are to apply our knowledge of what has gone on in this Convention to what was likely to have taken place in that Convention, we must conclude that advantage was taken of the absence of the great majority of the members of the Convention, and the presence of only a small fraction who took advantage of the situation to invoke this doctrine.

Think of it! Sixty-two members out of a possible 400 decided this

momentous question. Are we bound by any tremendous tradition to stand forever unalterably by the opinion of those 62 gentlemen? There certainly was no general consensus of opinion among the people of the Commonwealth that justifies us in believing that it was their general belief in the doctrine that impelled this vote.

I called attention in my argument last fall before this body, when we were discussing the question of the judiciary, as affected by the initiative and referendum, that there were in that Convention a great many lawyers, and that the Convention was held at a time when many of the leading, active spirits who brought about American independence were in the field with Washington helping to drive the British out of this country. Remember, the Convention of 1780 was held right in the very middle of that great revolution when it was on its fourth year, and I for one do not believe that that very small fraction of that Convention, — much less than one-half of a majority, — ever voiced the opinion of Massachusetts as she really would have it expressed.

Mr. CURTIS of Revere: Would it be a fair inference if the entire Convention had been assembled that the same proportion would have held good? The gentleman says that 62 members voted in favor of this proposition out of 86. I ask him if it would be a fair inference if the entire membership had been there that the same proportion would have held good.

Mr. O'CONNELL: Of course I can give simply my own opinion on this subject, but I am glad to give it because I think the Convention will agree with me that it is justified from the figures and from the facts. My honest judgment is this: That the Convention was dominated in great part by the then Justices of the Supreme Judicial Court, then known as the Superior Court of the Judicature, all of whom were members of the Convention and all of whom took a prominent part in the proceedings of the Convention, as is evident from their prominence and activities on the committees. I believe these men had influence enough with the small number of members who attended the Convention to determine the result which was achieved, viz., that of recommending an appointive judiciary for life; but if the members of the Convention who were absent, either because they were in the army or attending to their fisheries or their farms, or if the representatives of these classes of men could have been heard and had had the opportunity of voting, it is my firm conclusion that they never would have sanctioned this practical life tenure. Unquestionably advantage was taken of a situation of a small number in attendance, to carry through a vote on this doctrine, whereas if the whole membership had voted, life tenure would have been denied.

The work of the Convention of 1780 has been far-reaching, bringing forth as it did the first written Constitution in this Republic, and that under which we are operating to-day, with its forty-five amendments; but whether or not it was the expression of two-thirds of the people of Massachusetts, as was contemplated at the time when the Constitution was submitted, of course is open to very serious question; and I believe those who are familiar with the manner in which its final adoption was brought about will agree with me that advantage was taken of manipulating and adding the votes on the various subjects, thereby making a total of two-thirds altogether of the total vote, and

then announcing that the work of the Convention had the official sanction of two-thirds of the people of the Commonwealth.

Probably the most striking example of the real opinion of the people of this Commonwealth concerning the judges happened not many years later, when, on account of the disagreement of the people and the judges, there occurred the rising of the people against the work of the judges, which has been known in history as "Shays's Rebellion". It is not necessary for me to dwell on that incident other than to say that as a result the judges changed their attitude toward the people very decidedly and acted more in accordance with reason than they had been accustomed to.

We next come down to the Convention of 1820. That Convention debated the question concerning the judiciary, and there was a serious attempt made on the part of several favorites of the court to enlarge the powers of the judges to give them a power that never before had been contemplated, nor seriously thought of since. It proposed to change the Constitution whereby a majority of the House and Senate could address the Governor and Council if the majority of the Legislature considered that a judge should be removed for any good cause. The plan contemplated changing the word "majority" and substituting therefor a two-thirds vote of both the House and the Senate, and the reason urged was that the judges would be safer if it would take a two-thirds vote to bring about a removal vote. Think of it, gentlemen. Removal does not mean impeachment; removal usually is invoked where a judge has become useless or sick or incapacitated or perhaps intemperate, or a change has come over him, weakening his powers or ability, but for which he could not become criminally liable nor impeachable. And yet many of the lawyers of that Convention were working in harmony with the judiciary to build up another oligarchy, bringing forth as they did a proposition that a judge could not be removed for any cause except on a two-thirds vote of the House and the Senate. This was a most unfair proposition because it meant that for all practical purposes it would be absolutely impossible to remove a judge for any cause short of an impeachable offence. But the members of that Convention spoke decisively on that subject and it was defeated by a vote of two to one, or to be exact, 210 against 105, — a very big vote which showed the real attitude and temper of the delegates of that Convention, as to how they felt about the judiciary and its desire to secure greater powers for itself.

Let us come hurriedly now to the Convention of 1853. That Convention had a membership of real intellectual giants; its personnel was one of the most remarkable of any constitutional gathering that ever met in this country. The Convention had been preceded by a general discussion of constitutional questions for some three years prior to the time that it met, and all of its members were prepared to discuss constitutional questions. It certainly was composed of men who represented the real thought of Massachusetts in those days. It is unnecessary for me to recall to you the personnel of that great body. Some of you are familiar with its work, but I may be permitted to say that it certainly debated the questions of the organic law of Massachusetts in a manner that has won the admiration of every student and lover of this Commonwealth, whether he agrees with the work of that body or not. After lengthy discussion and a most thorough debate, the Con-

vention decided that they would change the system of appointing judges for life, and they offered to the people as their best judgment that it was better that Massachusetts should have the appointive system limited to a tenure of ten years.

I believe there is a big demand to-day for the change from the system under which we now live to that of an elective system or at least for a limited tenure. It is with the firmest conviction in the certainty of my opinion that I say to you gentlemen of this Convention that if you put before the people of Massachusetts the proposition as to whether or not they want an elective judiciary in place of that which we now have, they will say by an overwhelming vote, as they did in every other State in this Union, that they wish an elective judiciary in Massachusetts.

Mr. McANARNEY of Quincy: Does the gentleman carry in his mind the fact that when Massachusetts had an opportunity to be heard on this identical question of a ten-year limitation for the term of its judges, Massachusetts spoke and repudiated the idea and said it would have nothing to do with it?

Mr. O'CONNELL: I will be very glad indeed to answer that question. If my friend Mr. McAnarney will recall what took place in the Convention of 1853 he must admit that the omnibus proposition of acceptance or rejection on which the people were obliged to vote at that time brought about the defeat of all the admirable suggestions and propositions of the Convention; that it brought about the defeat of six amendments that, subsequently and immediately in the years following, were submitted to the people, each and every one of which was adopted; and if the people had had a chance to vote on this question separately, they would have adopted that in exactly the same way as they adopted the six questions which they had defeated when they defeated all the work of the Convention.

Mr. McANARNEY: Does not the gentleman know that it is part of the recorded history of Massachusetts that one of the reasons why the work of the Convention of 1853 was rejected was the very fact that in its work it incorporated this provision as to a change in the tenure of office of the judiciary? Does he not know, also, that the other and the desirable amendments were submitted to the people later on and accepted? The question was considered as dead after the people voted upon the work of that Convention and it never has been submitted to them from that day to this.

Mr. O'CONNELL: I cannot agree with the deductions and conclusions of my eloquent brother, because they are not at all in accordance with the facts. The real reason why the work of the Convention of 1853 was defeated is very well known to every student of history of those times. It was due to the proposed change in representation, whereby the little towns upon the hills and down on the Cape were going to lose the representation that they had in the Legislature, and it was the expression of resentment of the voters in those communities against a change that would lessen their representation that brought about the defeat of the work of the Convention of 1853. All students and critics of the Convention's history admit that that was the great contributing and overwhelming cause why their work was defeated.

Continuing his argument after the recess, Mr. O'Connell said:

At the hour of taking the recess the gentleman from Quincy (Mr. McAnarney) had referred to the action of the people concerning the election of judges after the work of the Convention in 1853. Answering his question right at that point, I want to call the Convention's attention to this feature: The strong point made in the Convention of 1853 by the men who fought the proposed elective judiciary, such as Dana and Greenleaf, and particularly the well-known effort of Rufus Choate (that is known and has been read by every lawyer in Massachusetts, and that has been supposed to be the Gospel of our present life system), the one strong point that they made was that it had not been tried, — the elective system was not known, and they pleaded to hold fast to those things that they already possessed and not venture at that time into the other fields, although the other fields might hold out promise of the fruits which were expected.

At that time some of the western States were just starting their careers. New York had changed just shortly before, and Pennsylvania, but two years prior, had abandoned the life tenure for an elective form, and the consequence was that the argument had tremendous weight with the Convention and necessarily with the people. But all the value of that argument has gone, and the necessity of waiting for proven results has passed, because forty-three States in this Union to-day elect judges, and those forty-three States are perfectly satisfied with the elective system, while the other States have the limited tenure.

I referred to the Convention of 1820. The Convention of 1820 was called principally because of the separation of the great district, now the State of Maine, from Massachusetts.

Mr. McAnarney: The gentleman says he thinks the objection Rufus Choate had to the limited tenure was because it was untried. I desire to call the attention of the gentleman to Vol. 2, page 808 of the published reports of debates on that question, and to the following language by Rufus Choate:

> This ten-years judge of yours is placed in a situation where he is in extreme danger of feeling, and of being suspected of feeling, so anxious a desire to secure his reappointment as to detract, justly or unjustly, somewhat from that confidence in him without which there is no judge.

Mr. O'Connell: All that is part of Rufus Choate's speech, but the part I referred to is this, — and I will call attention to that same speech, on page 807, vol. 2 of the same book from which my distinguished brother reads. Summing up, Mr. Choate said:

> In the first place, then, it seems to me most clear that the weight of sound general opinion and of the evidence of a trustworthy experience vastly preponderates in favor of it. How the system of popular elections, or of short terms, is actually working now in any one of the States which have recently introduced it; how, still more, it is likely to work there after the influences of the earlier system, the judges which it bred, the habits which it formed, the bars which it trained, have passed away, there is no proof before this Convention deserving one moment's notice. We do not know that they cannot yet possibly pronounce on the matter, however close or sagacious their observation. What they have not yet seen, they cannot yet tell.

That was his first, strongest, and most potent argument; it was the argument that was used by all those who resisted the tendency of the day to elect judges, in 1853. Rufus Choate invoked this, — at that

time powerful, — argument, and invoked it as only he knew how. And it was the great and deserved popularity of Rufus Choate in those days that gave added strength to his argument, — his bewitching oratory, and his clear, wonderful method of expressing himself in that Convention as in all kinds of assemblies.

Now, I started to say, when the gentleman from Quincy interrupted me, that our Convention of 1820 was called for one principal reason, namely, the separation of the great district now the State of Maine. Maine, then a part of Massachusetts, was a substantial part of our State. And what was the first thing that the people of the new State of Maine did in their Constitution? My distinguished friend, the former member of Congress, Mr. Powers from Newton, called attention this morning to the fact that Maine has a very satisfactory system of limited tenure for her judges and that Maine has a splendid judiciary. The first thing that the new State of Maine did in adopting a Constitution was to change from the life tenure which prevailed when she was part of Massachusetts and adopt the limited tenure of appointment by the Governor for a term of seven years. That system has worked out eminently satisfactorily in the State of Maine. I have here a letter from Mr. Pattangall, who was Attorney-General of Maine for several years and one of Maine's leading lawyers. This was addressed to me last August, in reply to a letter in which I asked him how the system was working in Maine. He goes on to state:

> Judges in Maine are appointed by the Governor with the advice and consent of the Council. They are not confirmed by the Legislature. Judges of the Supreme Court and Superior Courts are appointed for seven years; judges of municipal courts are appointed for four years. The only remaining judges in Maine are our probate judges, who are elected by the voters of each county, the term being four years.
>
> All of our judges are subject to removal by impeachment or by address to the Governor by a majority of the Legislature requesting their removal. By a provision of our statutes after a judge of the Supreme or Superior Court reaches the age of seventy, provided he has served at least ten years, he may retire and receive half salary for the remainder of his life if he likes. Retirement is not compulsory, but unless he exercises his option of retiring at some time after he reaches the age of seventy and before he reaches the age of seventy-one, he waives the retirement provision.
>
> All of these provisions relating to the appointment of judges and their tenure of office are embodied in our Constitution and were a part of the original Constitution adopted by Maine in 1820, with the exception of the retirement provision, which first became law in 1909, the statute being amended in 1911.
>
> Under our system the appointment has been practically a life appointment. In the history of Maine there have not been a half-dozen judges who have been refused a reappointment. I have practiced at the Maine bar for twenty-five years and every judge who would accept a reappointment during that time has been reappointed, with two exceptions, and in both of those cases there were reasons for the failure to reappoint which appealed to the Governor. Politics had nothing to do with one of these failures to reappoint and had all to do with the other.
>
> I am satisfied that our system of appointing judges for seven years and then reappointing them in the absence of any reason for not doing so, is a good deal saner and better system than the one under which you live. It, to a certain extent, does away with the clamor for recall of judges, and it also appears, at least once in seven years, to tend to bring to our judges a realizing sense of the fact that they are human beings.
>
> Yours very truly,
>
> W. R. Pattangall.

That is the experience of Maine, and every lawyer of Massachusetts who has traveled to Maine and practiced law there knows that the people of Maine are perfectly satisfied with that system. They have

a splendid judiciary and they stand up well in the light of all hostile criticism, and compare favorably with other States, including Massachusetts.

Now, take the next instance that comes along. When West Virginia was separated from Virginia at the time of the civil war, Virginia had a system of appointment by the Legislature. Virginia was a good deal like Massachusetts in the temper of her people and in her early constitutional history. West Virginia adopted election by the people in 1863 and is satisfied.

Take the great west that has been developed, with full knowledge of the history of Massachusetts. No State has adopted the Massachusetts system. Not a single State of all the great Union has followed us except in the very beginning, and of those that did so what is left? Every State that followed Massachusetts in adopting a life tenure for judges has abandoned it, and has changed either to an elective system or to an appointive system for a limited number of years. Not a single instance is before the American people where States that have the elective system ever even thought of turning back to the appointive system for life. No instance can be advanced of a single State, where they have a limited tenure for a term of years, where they have suggested a return to the tenure for life.

Law and order do not cease in any of those States that adopted the elective system. All of you gentlemen of this Convention who have traveled, and I assume that most of you at least have traveled into many States of this Union, will agree with me that while we may find a different character of people in New England or in Massachusetts from that which is found in Illinois or California or any other of the far distant States, still the basic elements of morality and public sentiment are about the same everywhere in this great Republic. Everywhere we find that the people of the different localities act along the same identical principles of humanity and justice when it comes to upholding the majesty of the law. Great interests and momentous questions often are submitted to the courts of those States. The greatest cases the world knows, — involving the consideration and application of law of very far-reaching effect, — are tried more frequently before the elected judges of the State of New York than any other tribunal of this country. Next to New York comes the great Commonwealth of Pennsylvania, with its great cities of Philadelphia and Pittsburg, its rich mines of anthracite and bituminous coal, its great farms, its multitudinous manufacturing interests, — a common law State like Massachusetts, where the Declaration of Independence was first thought out and announced to a wondering world, — Pennsylvania, that still is proud of her wonderful history that was brought forth in the First and Second Continental Congresses and which at Gettysburg had the honor of throwing back the insurgent Confederacy at a time when it threatened the welfare of the Union. And closely following Pennsylvania with her elective judiciary comes the great States of Ohio, Illinois and California. I need not name the rest, but may I not ask in all earnestness of you gentlemen, if you do not agree with me that the people in those communities know full well just what they are doing or that they would be satisfied with anything less than the very best judiciary system in their judgment? Would the great corporations that have their homes and places of business in New

York city be willing to intrust their property interests and their rights to the mercy of a corrupt or indifferent or inefficient judiciary?

I have too much respect for the business judgment and good common sense of the business men and property owners of the great States that now have the elective judiciary to think that they would submit their cases into the hands of men who could not do the very best for them. The world knows that the imperial State of New York is administered successfully. Under an elective judiciary responsive to the people, the city of New York has become the money center of the world. My friend from Newton (Mr. Powers) called attention to the New York Court of Appeals. Every lawyer who knows anything about American judicature knows that the New York Court of Appeals is known as the very strongest, the very best court in this land, and challenges any court in this country for respect and authority of its decisions. It may be that possibly in times past we have measured up with the highest; but it is the consensus of opinion I believe among the lawyers of this land that the New York Court of Appeals, elected by the people for a limited tenure of years, has given the people of this country the best kind of service that can come from any judges in this country. [Applause.]

I hold no brief for the lawyers or for the judges of other States, but I can speak from my own experience and personal observation. I have been at the Massachusetts bar for twenty busy years and I have tried cases in seven or eight of the other States of the Union. I have met the judges in those States, and I know many lawyers in those States, because I have participated in trials with them. I may be pardoned for claiming to know the judiciary of this State practically as well as any man in this Convention, for I have practiced before most of the courts in the eastern part of this State. I have practiced in every one of our courts, from the Supreme Judicial Court to the lowest court. As a member of Congress, I have sat in close intimacy with judges of other States, and most of them were men of distinction and deep learning on the law, from States aside from New England. They were an honor and credit to the elective system of their various States. And I want to say to you gentlemen here that the people of the other States of the Union cannot get the Massachusetts' point of view that would put the rights of life and property into the hands of one man, and leave him there without accountability for life. They cannot get our angle of view, and I do not wonder, because, as I pointed out in the beginning, it is absolutely undemocratic. The people are sovereign, and the people are denied the right to rule if the judges are without responsibility to the people.

As a member of the Commission on Uniform Laws, having been officially designated by the Governor of our State, it is my distinction to meet in conference every year with many judges who are delegates from the other forty-seven States in this Union, and I find them men of great distinction, — men whose ideals are just as high as ours. I have learned to respect them, and to honor them. I know that they come from communities that are law abiding and where the lives and property of their people are jealously safeguarded. I know that they represent the ideals of their people of the very highest standard. Our effort in our meetings is to bring about a uniformity of laws among the States of the Union that will bring to the American people the

very best execution and service of the law that is possible. These men come from States where the people are convinced that an elective judiciary is the best that can be had.

Sometimes it is fashionable, among those who cannot tolerate the suggestion of any other system than that which we have here in Massachusetts, to ridicule and belittle some of the courts in other States for their alleged shortcomings, although many of those who so criticize never have had any actual experience in the courts which they attempt to ridicule. Let me say that I have watched and observed things in some of our lower courts and in some of the upper courts in this Commonwealth, and I challenge any member of this Convention to draw a comparison between the lower courts of some of the other States and the lower courts of this Commonwealth which would leave with any unbiased member any opinion that would favor some of the judges and the courts that we have and some of their work. Judge-made law has not been an uncommon thing in this Commonwealth. Who can say that the promulgation by Chief Justice Shaw in 1842 of the opinion of our Supreme Judicial Court, speaking without any consent from the Legislature, announcing that unjust "fellow-servant rule of law," to the effect that an employee could not recover damages for injuries received while in the service of his employer if the injury occurred through the negligence of a fellow-employee ever voiced the will of this Commonwealth? My fellow-delegate from Boston, Mr. Herbert A. Kenny, discussing this subject last summer, justly denounced Chief Justice Shaw for the expression of this law, which in future generations will be looked upon in abhorrence. Think, gentlemen, of the thousands of innocent women and children who have been made to suffer during over half a century, as a result of such a heartless law! It seems incomprehensible that any intelligent community would submit to such a condition. Thousands of innocent employees have lost their health and the means of a living, and they and their families have been cast into poverty and into the almshouses and hospitals as a result of this cruel, inhuman law that never really expressed the will of the people of Massachusetts. It was invoked by that court with the unquestioned purpose of protecting the captains of industry in this Commonwealth. The court felt that new industrial conditions ought to be protected by the court. But it was no business of the court to protect capital; that was the duty of the Legislature, and legislation easily could have been secured which would have protected adequately capital and labor without injuring or in any way handicapping either. So great was the respect and reverence inculcated into the people of this State for the opinions of the court, that it has taken over seventy-five years for the people to rouse themselves and redress this unmeasured wrong and to pass through its Legislature recently the Workmen's Compensation Act. Judge-made law in my opinion is a crime against this Republic, and yet it is so insidious that it is next to impossible to escape it until grave injuries have resulted. But it is not necessary for me to dwell on such instances. Take another feature of the situation. Go into the lower courts of this Commonwealth, particularly into some of those in and around Boston, and you will find exhibitions of judicial inefficiency, tyranny and favoritism that cry to Heaven for shame because of the manner in which those courts are conducted. I am not

going to mention names of such judges, but I have seen a young man come into a lower court charged with drunkenness for the first time, and I have been horrified to see a judge sentence that young man to a year in the House of Correction for his first offence, — an offence the most enlightened men would have considered a pure accident or possibly an evidence of a disease. I have seen that same judge and other judges sentence a child of 8, 9 or 10 years of age, accused of truancy, whenever that child would not have an attorney and because his folks were not present, — in the days when there was no requirement that parents be summoned to defend their child, — I have seen a child of those tender years sentenced to the Reform School for an indefinite sentence, and that indefinite sentence invariably meant that the child had to stay imprisoned until he was twenty-one years of age; and I want to assure you gentlemen that nearly every boy so sentenced became a confirmed criminal and an avowed enemy of society. Surely, gentlemen, these are things that ought to be changed and would be if the people had but the power to do so. Will any of the 160 lawyers in this Convention deny that favoritism exists in certain of our courts? Can any man arise in this Convention and assure us that our courts are administered in a manner that shows no distinction between the parties before it, nor makes no distinction? I know that when you hold up to me examples in other States in the Union and tell me that we are better than they are, I am convinced that you gentlemen do not know the exact facts about which you are talking, because I myself have seen them. [Applause.]

But, they say, you would bring politics into it! Well, let us take the judges of all our courts, — have they not all been appointed through politics? And look at the kind of politics! What is it? Is it the kind of politics with which the American people are familiar and which is typically American and in the main satisfactory, even though filled with shortcomings? Oh no! It is secret politics; and is there a man in this Convention rash enough to rise and tell me or announce to the world that he believes in secret politics in the matter of appointments in this Republic? Secret politics is the most reprehensible form of corrupt influence that annoys and bothers this Republic to-day. You members should not forget that we are a Republic and the people are supposed to rule; and yet it is a notorious fact that appointments to our bench are brought about in secrecy, — secrecy of the fraternal chamber, secrecy of the political boss's office and secrecy by the leaders of the party that is in power and by the friends of the candidate for the judgeship, whoever they may be.

This is not what the people of Massachusetts wish. It is not what Sam Adams expected, nor what John Adams dreamt of. If John Adams ever thought that appointments would be brought about as they have been during the last fifty years in this Commonwealth, he would turn in his grave. He wanted only the best. He hoped and expected that Massachusetts never would have any but the very best men obtainable sitting on her bench and that judges would be selected because of their preëminent ability and exceptional fitness for the office. Can Massachusetts ever expect to have the best when a little group or coterie control the appointment of judges as they do with us to-day, when they meet and say: "Now here, Governor, this is the man; we want him"? Who are they, that they should be permitted to impose a judge

for life upon the people of this State, who under those circumstances know nothing about the qualifications of that man proposed for that high office? How are we going to get rid of that man if he turns out to be unfit, as so many judges have in the past? He is there for life. He may become intemperate; a disease may overcome him; he may lose his reason or he may become incapacitated for one reason or another, either because of advanced years or some malady which has overtaken him. But under our laws it is impossible to remove that man from the bench without causing great shame and grief to himself and to all those who are near and dear to him. None of us likes to do anything that is distasteful to another. Most men have a certain innate courtesy about them and a desire to refrain from doing anything that will hurt another person's feelings. We are accustomed to hope against hope that the person whom we would see corrected or a condition that we might hope to be bettered may change in the future. Impeachment is a most serious thing and is not to be thought of except in cases where men really have become criminals on the bench, — and many a time impeachment cannot be invoked because the wrongs that would be redressed are just short of impeachment. Removal by the Legislature is a public scandal and as such brings disgrace upon any man removed, even though the cause might be one for which the judge might not be to blame, — such as sickness or advanced age.

But give our judges a limited tenure and none of them would dare to become intemperate. Give us a limited tenure, and if a judge's mind fails him or bodily infirmities overcome him, if he becomes unfit for the office by his mental temperament or tyrannical tendency or grouchy disposition, he and his friends will know that when the time arrives for reappointment or reëlection, he will not have any right to ask the people or the Governor to either reëlect or to reappoint. The burden of responsibility to act in the very highest and best way of which a judge is capable always should be impressed upon the judge. When he is conscious that he is accountable to the people for the fullest measure of judicial capacity, he will conduct himself in an effort to respond to the ideals of the people so that he always may win their confidence and respect. "Oh," but some say, "you know politics will creep in and the court will get into politics." Well, will it any more than it does under our appointive system? Let me call to your attention two or three very prominent and illuminating examples of this fear. The question of the presidential election in 1876 between Samuel J. Tilden and Rutherford B. Hayes was submitted to a tribunal composed of fifteen members known as the Electoral Commission. It was composed of five distinguished members of the United States Supreme Court, five leading members of the United States Senate and five leading members of the National House, and that Commission, including among its members those five judges appointed from that august body and representing them, were found voting according to their previous political predilections and political beliefs. And no question could have been more important; no question ever was submitted to any judges in this country in which more was at stake. The very welfare of this Union was in the balance; and yet those appointive judges, who were holding a tenure for life, were found voting according to their political beliefs and the three Republican judges voted for the Republican candidate and their votes seated the Republican candidate against what the

most of the people of this country believed was the righteous claims of the Democratic candidate, Mr. Tilden.

In contradistinction to this example of what an appointive judiciary might do when a political question came before them, let me summon your attention to another example where another very important question of far-reaching effect was considered, but in this case by an elected judiciary. The committee appointed to secure information for this Convention secured the opinion of the Governors and Attorneys-General and presidents of bar associations as to the manner in which the various judicial systems were working in the various States. From the Attorney-General of Wisconsin they received this very striking report which I commend to the very earnest attention of every man here, but particularly to those who are accustomed to deride and impugn the elective system because of its alleged weakness toward those to whom it may feel indebted because of having been elected to the bench. The Attorney-General of Wisconsin wrote as follows:

I think I am safe in saying that the unanimous sentiment of this Commonwealth thoroughly and unreservedly indorses our elective judiciary system. We feel that we have, and always have had, an able and honest judiciary. The Supreme Court Reports of this State will testify to the ability of that court, and no suspicion is ever indulged of the absolute rectitude and honesty of the men holding judicial positions, whether it be upon the Supreme or Circuit Bench. You will observe that our judges are not elected at the general election. Our Constitution wisely provided that they should be elected at a special election held in the spring.

Right at that point I want to call to your attention the fact that many of the States where the elective system prevails take it away from the ordinary election and make it an election by itself, of a purely non-partizan character.

The purpose of this provision was to divorce the judiciary from politics. This provision, coupled with the unanimous sentiment of the State, has enabled us to keep our judiciary absolutely free from political trammel. Perhaps I can cite you no more convincing proof of this than to refer you to the case of State *ex rel.* Husting *vs.* Board of State Canvassers, reported in 159 Wis. 216. At that time the court was composed of five Republicans and two Democrats. The five Republican judges sided with Mr. Husting, the Democratic candidate for United States Senator, while the two Democratic judges favored the contention of Francis E. McGovern, the Republican candidate for United States Senator. From this you will see that party considerations did not in the least influence the court in passing upon the controversy raised by the opposing candidates for United States Senator.

In clear contradistinction to this Wisconsin case, let me call up the Legal Tender cases in the United States Supreme Court wherein through the instrumentality of politics, that court was made the instrument of a political, partizan purpose which was achieved through the channels of the appointive system. Advocates and champions of the appointive system for life may endeavor to excuse and explain away the reversal of opinion in that celebrated case, but the American people and those who have followed closely National affairs always will be convinced that the Legal Tender law was declared constitutional through the most reprehensible methods. To relieve the financial difficulties surrounding the financing of the civil war and the enormous expenses imposed upon the country, the so-called Legal Tender Act was passed. This measure in a few words authorized the issue of non-interest bearing treasury notes making them legal tender in payment of all debts. The plan was opposed by Secretary Chase of President Lincoln's Cabinet and by all the great bankers

of the great commercial cities. Doubts were raised as to whether Congress had the power to provide for the coinage of money, other than the coinage of gold and silver into money. The act, however, was passed and went into effect and its constitutionality was not questioned until 1869 when Secretary Chase had been appointed Chief Justice. The question came before the Supreme Court in the case of Hepburn *vs.* Griswold, and Chief Justice Chase delivered the opinion of the Court, which reflected his own original opposition and the act was declared unconstitutional. The court consisted at that time of eight Justices and the opinion as given was that of the majority, namely, the Chief Justice and Justices Nelson, Clifford, Grier and Field. This decision upset the administration and caused a very pronounced feeling among the people and in fact was the forerunner of the financial panic which followed not long after. Congress the following year added another Justice to the Supreme Court and Justice Grier resigned. This afforded the President an opportunity of appointing two men, and it generally was accepted that the two men, Messrs. Strong and Bradley, whom he did appoint, were in favor of the constitutionality of declaring the Legal Tender Act constitutional, which thus would insure a reversal of the adverse decision. That the administration was not destined to disappointment was quickly evident, because, almost immediately after the appointment of these men, the court convened, and the previous decision was reversed with the majority then holding that the act was constitutional, leaving the prior majority of the Chief Justice with Messrs. Nelson, Clifford and Field still dissenting but bereft of the power of the majority on account of the manner in which the court had been added to and the attitude of the new appointees. Probably there never was such an example and I trust there never will be any such display of change in attitude by any court in our land. Could there be a stronger indictment against the politics which is inevitable in the system of an appointive judiciary for life than that which the Legal Tender cases, so called, displayed and proved?

Such instances make me wonder whether we possibly can be safe under our system and whether it is not better to change. These arguments appeal to me not only from the historian's standpoint, but they convince me as a member of this Convention that it is my duty to urge upon you to change or modify our system so that we may avoid all possibilities of permitting wrong to be done in our courts.

Some may argue that we should not touch the judiciary and say: "Oh, we should hold on to this because it is old and therefore sacred. An ancient institution should not be touched and the hand that suggests progress profanes the temple." Such an attitude is unworthy of any man who holds membership in this Convention, because the mere fact that the Convention is meeting is the all-sufficient answer that the people have decided that changes are necessary in our organic laws and they indicated no desire to except the judiciary. When we were ordered to meet and consider organic changes and modifications, we should not be unmindful of the changed condition in the world around and about us. We take just pride in the fact that most of the States in the Union have followed us whenever we have done well. They have paid us the high compliment of adopting our systems whenever they have been convinced that they have been wise; but

the one thing that stands out as an exception is this attitude of ours concerning the judiciary. Every other State in the Union says: "No, no, Massachusetts, you have done exceedingly well in many things and we have been very glad indeed to follow your leadership. But when it comes down to the judiciary you are violating one of the fundamental principles on which the American Republic was built and you are invoking an undemocratic system in doing so, and we will not follow you, because you are undemocratic in this respect."

Fellow-delegates, we all love this country of ours. We know that a world struggle is going on and that its only purpose is to protect Democracy. We are sending millions of our best blood across the ocean to fight on the plains of Europe. For what? We are giving millions and billions of our wealth and property and we will give every dollar that we have in order to win this titanic struggle. No sacrifice is too great for us. We will mortgage all our future in order to insure success. Many of us would go to-day if the government would accept us. All of us will give all that we have in order to win. And for what? Simply to keep that vital spark of human liberty as expressed here in our Constitution alive, untrammeled and with its foundations untouched and unshaken. Yet here men to-day rise and say in this Commonwealth: "We will grant you that Democracy is essential in everything pertaining to government and that it should be protected from all danger, but we want a little oligarchy running the judiciary. It may be all right for the people to elect Presidents and Governors and Senators and to fight the battles of Democracy, lay down their lives willingly for their fellow-men, but it is not right for them to elect the judges." Why this great exception? What can be given to the people to do that is more important than what they already have done? Which is more important, the passing of a law by the Legislature and its enunciation and execution by the courts or the sitting in judgment upon an organic law before it becomes such? Are we not doing here to-day one of the most vital and important things that possibly can be done, and must it not be submitted to the people for their judgment? The people of this Commonwealth were called upon to say whether they desired a Constitutional Convention and they answered it in the affirmative. Then they were called upon to say who their delegates should be and they sent you gentlemen, my fellow-delegates. But while this is important on their part, our work has yet to be submitted to them and they must either approve or disapprove of it. Surely when they pass judgment on an organic law by their votes, they do something more far reaching and important and permanent than the election of any judge of any court, because that organic law will bind us all after the people have expressed their satisfaction of it. If they can express their will and good judgment upon an organic law is there a man here who can gainsay the fact that the same judgment and intellect cannot bring forth also a good judge?

It comes with very poor grace for any member of this Convention who has been elected by the discernment and by the favor of the people to rise here and say: "The people are good enough to elect me to suggest an organic law, but they cannot be trusted to elect a judge of any court." Gentlemen, let us realize what our present situation means. Let us be mindful that the rest of this great Re-

public does not approve of our system and that we ourselves really are not justified in what has been done. It is true that we may have had some great men on our bench in times past, but it has been a matter of chance that we secured men of signal integrity to sit on that bench. There should be a way of testing and finding out what the future judge is to be, and the people should have a chance of passing their judgment on him instead of having it confined to the secrecy of the executive office and the Council chamber.

Distinctions have been drawn and some have been heard to say that we have not a life system, — that it is only a tenure during good behavior and that is a test. Yet I think that the acceptance of the office by nearly every man who has been appointed has been with the idea that he had a life tenure. This attitude of mind was exhibited strongly in the case of Judge Bradbury of our Supreme Judicial Court. He became palsied and could not do his work and the people stood it as long as patience could be considered a virtue, but finally his case was submitted to the Legislature and both Houses voted to petition the Governor to remove him. What did Judge Bradbury do? He addressed the Governor and Council and maintained that the Legislature had no right to remove him because he had not misbehaved himself and he claimed that he had a life estate in the office. The question was considered seriously as to whether or not his construction of his term of office was not the right one. Just imagine, gentlemen, a judge of our court of final resort maintained that, by virtue of his appointment, he had a life estate in his office! And there are many on the bench to-day throughout this Commonwealth who have so conducted themselves that there can be no conclusion other than that they also feel that they have a life estate in their office. They, too, believe that as long as things are not done scandalously, as long as they do not violate any specific law and as long as they do not commit an impeachable crime, that they will not be disturbed and cannot be removed. I do not want a tyrant on the bench in this Commonwealth. I hate tyranny in any shape or form and I gladly would help vote to break down the domination of any class of men who would seek by open or secret means to perpetuate or cultivate a tyrannous disposition in such a sacred place of trust as a court in Massachusetts. Neither do I want an irritable man on the bench nor a man who is the victim of dyspepsia or any other malady that interferes with an even temper and train of thought. The bench is no place for petty autocrats who keep within the exact letter of the law, but nevertheless abuse it against some particular man or party whom they may not like. There are a million ways of torturing and punishing without bringing the perpetrator within the pale of the law.

I want judges on our bench, gentlemen, of the most upright character, — men learned in the law and rich in experience, who never will forget the great trust that is imposed upon them, whether they hold a position in our Supreme Judicial Court or as Justice of our most humble district court; judges who can give the people of this Commonwealth the very best that Massachusetts is capable of producing. No one is more proud of this old Bay State than I am, and I want her to go onward and upward and never take a backward step. I want her to do the best that possibly can be done, and in

my understanding of this great division of our government, I believe that an elective system will best insure that result. That question having been disposed of in my absence last Friday, I must take the next best guarantee that will insure the best judiciary for the Commonwealth, so I will support the measure for a limited tenure of office for our judges. This I think is necessary in the case of our Supreme Judicial Court, where many of the questions that are passed upon are really questions involving the basic principles of legislation. I wish that the question could be divided, as it was when the Constitution was adopted, and that we might be able to vote upon the tenure of the various courts. This I would like to see because, while important questions go to the Supreme Judicial Court, they are few in number in comparison with the multitude of questions that are presented to the lower courts that daily are dealing with the liberties and property rights of the great masses of the State, and our attention should not be diverted from the importance of these lower courts. Let me urge you in conclusion not to quickly pass this by. Do not invoke the legislative machinery that would close debate and choke off consideration. Let it not be said that in this year adequate thought was not devoted to this all-important branch of our government; and if you members can agree with me that there should be some change in the tenure of judges in our court, let it be done only after mature consideration. Above all let our result be based particularly on the one overwhelming, supreme thought, — that nothing is more important to the people of Massachusetts than the very best judicial system that is possible from our deliberations. [Applause.]

Mr. CHANDLER of Somerville: I have listened for the last three days to various eloquent speeches here on this judicial question. I believe that the time has come for a vote, and I therefore move the previous question.

Mr. O'CONNELL: I should like to ask the gentleman to withdraw that at the present time, because I saw two or three members get on their feet who were anxious to discuss this rather important question. I should like to ask him to withhold that motion for at least another half-hour. There is no sense in rushing it through this minute when men want to discuss it, and I would ask the gentleman to withdraw his motion.

Mr. CHANDLER: I would withdraw it if it could be put in half an hour from now.

Mr. LUCE of Waltham: I call the attention of the gentleman from Boston (Mr. O'Connell) in the second division to the fact that the committee on Rules recommended and the Convention adopted a procedure to meet precisely this situation, that we have interpolated twenty minutes for debate before the conclusion of debate. This is a novelty in parliamentary practice, and possibly the gentleman has not been informed of it, but the rule now reads that if the previous question is ordered twenty minutes shall be allowed for general debate.

Mr. O'CONNELL: I quite recognize that this is a novelty in the line of parliamentary practice. It practically has vitiated the whole principle of the Committee of the Whole, and in fact it is a misnomer now to call it Committee of the Whole. This question of enlarging debate after the main question has been ordered is certainly another violation of the principles of the previous debate. What I was going to say is

this: I do not believe that anything is gained in a matter of this kind by rushing a subject that ought to be discussed, and I hope the previous question will be voted down.

Now, before I take my seat, may I ask the Chair whether or not, if the previous question under our present rule is ordered now, amendments may be made or substitutes offered for the motions now before the house.

The Presiding Officer: For the information of the member from Boston, amendments cannot be made after the previous question has been ordered.

Mr. O'Connell: That makes it very difficult, gentlemen, because I should like to offer a perfecting amendment to one of those measures, and I think other members have in mind other perfecting amendments. It would seem as though an opportunity ought to be given to offer at least amendments to the measure now before the Convention, and I hope that the gentleman will withdraw his motion.

The motion was withdrawn.

Mr. Blackmur of Quincy: I rise simply to make an explanation and answer the question put to me by the gentleman in the third division (Mr. Lomasney) when I offered my amendment, and which I feel was not answered satisfactorily or perhaps clearly, and that was as to whether or not the language which I used in my amendment might not be too broad. As it is only seven lines long I am going to ask your indulgence while I read it.

The Governor by and with the consent of the Council may retire any judicial officer because of advanced age, mental or physical incapacity.

And the amendment suggested by Mr. Curtis in the first division and accepted by me was:

And the General Court may provide pensions for judges so retired.

The question was, as I understood it, might "any judicial officer" include officers such as masters in chancery. At the recess I discovered that masters in chancery in the first place are appointed only for a limited tenure, seven years, and in addition the provision as to pensions relates only to judges and nobody else; and therefore the broad language used, and there can be not the slightest objection in making it broad, was that the Governor could retire any judicial officer for the reasons of advanced age, mental or physical incapacity, but that the provision for pensions related only to judges.

Mr. Hart of Cambridge: I do not design to take much of the time of this Convention upon the question now pending, and I wish first of all to assure the gentleman from Boston (Mr. O'Connell) that the farthest from my thoughts was to interrupt a speech which I supposed and apparently the Chair supposed had been concluded when I arose previously. The lawyers in this Convention and the jurists are all agreed that the judicial system of Massachusetts needs no substantial amendment, — the proof of which is, of course, that the committee on Judiciary saw fit to recommend no change whatever in the procedure or in the organization of the Massachusetts courts. It is perfectly clear that the bar of Massachusetts and the bench are satisfied with things as they are; and there is no doubt that the

people of the Commonwealth have complained little either of the organization of the courts or of their procedure, and still less of the character of the judges who have come to the front under our present system of appointment. That it is a good system is shown further by the agreement of most laymen, as well as those who have had occasion to practice before the courts of the Commonwealth, that in general the judges are upright and able men, and that they are as little disposed as the judges of any Commonwealth to act in a manner which corresponds to a gone-by state of public opinion.

Nevertheless there are other successful methods of choosing the judiciary in other parts of the Union. This Commonwealth has a very unusual method, unusual when it was first adopted, inasmuch as in many cases at that time most State judges were chosen by the Legislatures. Subsequently the choice in other States passed from the Legislatures to the popular vote, while in Massachusetts it remained vested in the Governor. It is true that our system upon the whole has worked well. When the waves of corruption swept over the State of New York fifty years ago, when Barnards and Cordusals were selling their decisions to the highest bidder, or were making midnight chamber decisions in order to enable people to steal the property of others, Massachusetts had no such experience.

There are undeniable difficulties about an elective judiciary. It is not many years ago, for instance, that Roger A. Pryor, born in Virginia but for long a distinguished and leading member of the New York Bar and then a judge, complained with justice that it was a great hardship for a man whose salary was about $10,000 a year to have to plank down $10,000 in cash before he could get a renomination in his own district though nobody opposed him. The fact was that at that time apparently no candidate was put upon a party ballot who did not contribute to the party funds a sum about equal to one year's salary. We have been free from such evils. But are we free because of the life tenure of the judges or because in this Commonwealth the method of appointment has worked better than the method of popular election elsewhere?

The number of persons in the United States possessing tenures of office for life always has been extremely small. It used to be stated that there were none in the whole country that had any such tenure except the officers of the United States army and navy, the judges of the United States courts, the judges of the Massachusetts courts and of a few other States, and the professors in certain large universities. Even upon that point the security is not perfect, inasmuch as the President Emeritus of Harvard University (Mr. Eliot) used on occasions to announce the great principle that the professors of that institution held their places "during good behavior and efficiency," and the body that determines when efficiency ceases is the body which previously appointed the professor, a practice which is exactly in line with one of the proposals now before us.

To my mind the great merit of the Massachusetts system is the appointment of judges by a Governor, a single person who takes all the responsibility, who is known, to whom the arguments for or against the appointment of a particular person can be brought. It does not in the least depend, however, upon life appointments, any more than the virtue of choice by popular election depends upon election for life. We

would have all the good features of our present system, if the appointments by the Governor were made for briefer periods than life.

I wish to add here the experience of a layman to the testimony of several members of the bar, as to the fact that there are some very weak spots in the judiciary of Massachusetts. That fact came home to me a few years ago through a long protracted contest in which I was a silent partner for the recovery of the value of a small estate which had gone into the hands of a member of the Massachusetts bar. It took nine years, — nine years! — of determined and persistent effort, to secure from that man an accounting for his trust. Nine years he held in his hands small sums due to the heirs, and nothing dislodged him except a prosecution which cost more than five times what those who put down the money received from the enterprise. Now, what was the difficulty? The difficulty was that the judge of probate declined to exercise his administrative power, by pressure or influence, to compel that lawyer to do his duty; and nothing but a direct prosecution, brought to the judge's notice in such a manner that it could not escape him, forced him to the point where he even would consider the rights of the heirs to their own money. The probate judge, till forced to take ground, would do nothing that was inconvenient to him. The administrator had received the money, but apparently it was not in cash in the bank. There seems to exist no system in this State by which trustees under such circumstances are compelled to deposit funds belonging to other people. This judicial weakness is widespread. It is said that in the city of New York about one-half of the small estates that are put into the hands of executors without bonds are total losses; that is, those who are entitled to the money never get it.

If a person who had at least the means to push a prosecution, who was determined that he would not be cheated out of his eye teeth and was willing to pay the necessary sum to save those eye teeth, found it a task of nine years to collect a few hundred dollars, what must be the situation of those who are without the means or the influence to enter and prosecute a suit against the delinquent! I had the honor of presenting this case to the Judiciary Committee of this Convention, suggesting that there ought to be some State official whose official business should be to compel accounting in such cases. The committee politely laughed me to scorn, and asked me why I did not get a good lawyer. Well, if I had not finally got a good lawyer, a member of this Convention, who could be ugly and in the end was uglier than the other fellow, I never should have got my money. Even with that vigorous lawyer it took about two years to drive the administrator out of his corner.

My point is simply this: The real difficulty with the Massachusetts judiciary is not character. It is a learned judiciary. It is a fairly impartial judiciary. The real difficulty is the lack of sufficient positive administrative responsibility in the courts of this State which they will exercise without being jogged by an expensive suit. I do not know whether these difficulties, which I happened to discover in my own experience in probate proceedings, extend also to cases of a somewhat similar nature, such as the appointment of masters, where the funds of other people are for the time being in the hands of persons appointed by the court. I do know, however, that the judicial system of this Commonwealth in certain courts is deficient, is weak, is preposterous; and

since the Convention is taking no direct steps to remedy that evil, the pending proposition is our one chance to galvanize the judiciary. The pending measure is the very smallest, mildest possible change in the organization of the judiciary that there is any possibility now of securing: First of all, by providing that there may be a removal by the Governor under such circumstances that removal ought not to be necessary, circumstances where the judge himself ought to realize that his usefulness has gone. If he will not realize it, then it should be realized for him. The remedy here proposed is properly an administrative remedy; an administrative officer is authorized to remove or suggest for removal a person who no longer is capable of doing his duty. I vote, therefore, for that proposition. In addition, if I have the opportunity, as I hope to have, I shall vote for the proposition that judges in the Commonwealth of Massachusetts be appointed for terms of years instead of for life.

Mr. MERRIAM of Framingham: I hesitate to speak on this important question, which is to me the all-important question before this Convention. There is no more important function of government than the administration of justice, and we must pause and consider seriously whatever is done in this matter before we disturb the system so well administered during these hundred and more years.

The gentleman from Boston (Mr. O'Connell) in his argument cited as an example of the abuse of the appointive system the Legal Tender cases, in the United States Supreme Court. The charge, as I understand it, is this: That that court at one time decided a law to be unconstitutional, that a vacancy then existed, that a further judge was to be appointed; and in order to reverse the action of the court two appointments were made and the decision rendered the other way, a charge in effect that the President of the United States deliberately packed that court for the purpose of bringing about a political decision. We have evidence as to what was done at that time which I think the people of Massachusetts should listen to. That charge affected the honor of Judge Ebenezer Rockwood Hoar, at that time Attorney-General in the Cabinet of President Grant. His brother, Senator George F. Hoar, almost as a dying declaration put in his autobiography a clear statement of just what happened in that event, and from that statement it appears that these appointments made by President Grant were made in advance of the announcement of the decision, made by the President when he did not know what the court would decide or that the court would decide anything. Senator Hoar has left this statement in these words, and I invite the attention of the gentleman from Boston and the members of the Convention to this simple statement:

> This decision gave rise to an attack upon the administration of President Grant, and especially upon Judge Hoar, then Attorney-General, which, although it has no foundation whatever in fact, is occasionally revived in later years, that the court was packed by appointing two new judges to reverse the decision. The decision in Hepburn *vs.* Griswold was announced in the Supreme Court February 7, 1870. The court met at 12 o'clock. The decision was read by the Chief Justice after several opinions had been read by other judges, so that the afternoon must have advanced considerably before it was promulgated. It had not been made known to the public in advance by the press, and President Grant and Attorney-General Hoar both affirm that they had no knowledge of the decision and had no expectation of what it would be before it was announced. I myself had a conversation with Attorney-General Hoar in the afternoon of that day. He had just heard the

decision from the Chief Justice with great astonishment and surprise. Four judges concurred in the decision. There were two vacancies in the court, one occasioned by the withdrawal of Mr. Justice Greer and one by the Act of Congress at the previous session providing for an additional judge. At 12 o'clock in the morning of that day, before the decision in Hepburn *vs.* Griswold was made known, President Grant had sent to the Senate, and the Senate had received, the communication nominating Messrs. Strong and Bradley to these vacancies.

This is not the only inaccurate statement that it seems to me has been made in this debate with reference to the decisions of our courts. One of the speakers, my friend upon my right, referred to a recent decision in which it was declared by the court, as he said, that labor was property. After his conclusion I asked him, as he will remember, if he had read the case of Bogni *vs.* Perotti. To my surprise he said he had not, and asked me what it was. That is the case in which Judge Rugg, speaking for the court, held that the right of a man, the ability of a man to labor, was property, but that it was his own property. That decision was announced by our Chief Justice in an opinion which it seems to me is absolutely sane and sound and should be regarded as one of the bed-rock decisions of the labor world. It was not only the decision of Judge Rugg, it was the decision of the undivided court, and two of the judges in that court were Judge Carroll and Judge DeCourcey; and no man will arise in his seat to declare that these judges or any of our judges would hold the interests of the laboring man in light regard. That decision held that a man's right to labor was his own property, not the property of his employer, but that it was his own property, that he could do with it as he wished, that it was entitled to the protection of the law, that no one could take it from him, and that whatever else it might be, intimating possibly that it was something else, it had the qualities of property in the sense that it was entitled to the protection of the law.

Mr. BROWN of Brockton: I should like the learned gentleman's opinion upon this question. If it be that the labor of a man is property, whose property is it when the man sells his labor to an employer?

Mr. MERRIAM: If a laborer in handling his right to labor and in his own interest makes a contract concerning his right to labor and demands his equivalent, then he has received his equivalent by virtue of the contract that he himself has made, and the law will protect him, as I understand it, in that decision, in the exercise of that right.

Now, another reference was made to a decision of our court in the matter of child labor. We all believe in the matter of home rule. Is there a man here who does not sympathize with the right of the people of Ireland in the great cause that they have advocated in the matter of home rule?

Mr. HARRIMAN of New Bedford: I am interested in what the gentleman from Framingham has said, and in his defence of the courts of Massachusetts. He has said that labor is a personal right. I wish to ask him if he remembers the case of Worthington *vs.* Waring in 1892, where the court declared that personal rights are distinguished from the rights of property, and the case was then dismissed. In the Haverhill case the court said the right to labor is a common law right. The recent decision of our Supreme Court now says that labor is property. I ask him how he can reconcile these decisions of the court upon this great question.

Mr. MERRIAM: We shall have later, when this subject is reached in

the matters dealing more specifically with it, an opportunity to carry this debate further. At the present time I merely wish to call attention to the fact of the decision in this court in Bogni *vs.* Perotti, that it was a decision in the interest of the man's own right to labor, a decision by our united court, and a decision in which Judge DeCourcy and Judge Carroll participated.

It is too bad, it seems to me, to bring in these questions with these distorted ideas of the effect of the decisions in the effort to attack the method of appointing our judges. Our system has worked well. Justice has been administered well in Massachusetts. There may be exceptions, but I claim that they are only such exceptions as inevitably would be connected with such long administration as we now have in the history of Massachusetts. Let that system alone. Let it continue just as it is, realizing the worth of our judiciary, realizing the importance of preserving for our people an impartial, independent, fearless judiciary. Do not touch it, but leave it as it is.

Mr. ADAMS of Quincy: At this late moment of the debate I hesitate very much to address the Convention, except that I should like to point out very briefly a condition which I think should require and should be given a long, — a long, — debate, but I throw it out now only in order to suggest that I do not think that this question of the tenure of the judiciary has been treated in its fundamental character. Under our system of written Constitutions the habit has come in, by our judiciary at least, of deciding that it is their prerogative to constitute themselves a third chamber, with the right of imposing a veto on legislation which has been approved by the Houses of Congress. The result has been perfectly logical, since the same rules have been applied to the Legislature and the courts, for the courts have constituted themselves a non-elective legislative assembly; that is to say, a third body, and the same rules have been applied to them as to the other legislative chambers. That is the rule of election, — that if the judges are to exercise a veto on legislation they ought to be elected by the people. That has been the logical progression, and it gradually has swept over the whole United States, and it has ended only with the Commonwealth of Massachusetts, which is the last. Now, I conceive that as long as the system endures by which judges have constituted themselves a third chamber of legislation, who have the power of vetoing any political movement which takes place in the other two chambers of the Legislature, they logically must become sooner or later elective, like those. That our system stands alone in the world of admitting the judiciary to exercise this power has nothing whatever to do with this matter. We claim that it is a great advance in civilization to have the judiciary exercising this power. I am not going into that question, which is an enormous question, I agree, but I wish to point out that the reason why we have elective judiciary is, I conceive, simply because we have our judges acting as legislators. That is the upshot of it. I am not personally in favor of an elective judiciary. I do not believe that the process of justice is improved by having the judges elected. But I do believe that as long as our judges exercise the power of vetoing legislation there will be no peace in our community until the judges become elective or anyway are removable by some power or other outside of themselves.

That, Mr. President, is all I have to say at present on this subject.

Mr. GEORGE of Haverhill: I should like to raise this question. I should like to know why it is necessary to bring in the pension question. For the first time in the history of Massachusetts the pension system is to be recognized in our Constitution by this proposal and the amendment of the delegate from Quincy (Mr. Blackmur). It seems to me it is entirely out of place. Now, the Legislature has a perfect right to pension the judges, because they have been doing it for the last forty years. I beg to call your attention to an act that was passed in 1899, which provides that "any Justice of either of said courts who, after having attained the age of sixty years and after having served in either or both of said courts at least fifteen consecutive years, shall have become incapacitated from the full discharge of his duties as such Justice by reason of sickness or otherwise, may, with the approval of the Governor and Council, resign his office under the provisions of this section and shall thereupon during the remainder of his natural life receive an amount equal to three-fourths of the salary which was by law payable to him at the time of his resignation, to be paid from the treasury of the Commonwealth in the same manner as the salaries of acting Justices are paid." Now, the Governor and Council, under the act as proposed by the delegate from Quincy, if they find that a judge is incapacitated, simply can suggest to him that he had better resign, and if he resigns he can receive three-fourths of his salary during his natural life. If any judge who becomes incapacitated is so obstinate that he will not resign when he is told to, and they remove him, he ought not to get any pension.

It seems to me that it is wrong; we ought not to bring the pension system in here. Nowhere in the Constitution of Massachusetts is the question of pensions referred to. And why should we provide a pension for a judge who refuses to get off of the bench when he is told by the Governor and Council that he is incapacitated, and probably he knows it as well as anybody else? I am not saying this in criticism of the judiciary. I am not in sympathy with this movement. I am fully aware that the Justices of the Supreme Judicial Court and the Superior Court and all other courts are human, and I cannot see where we are going to gain anything by making these appointments more numerous than they are now. I hope that, — I shall not express any hope because that will not do any good. I might add that there is no legislation necessary. They ought to leave the question just where they find it. Of course if they wanted to pass that part of the proposal offered by the delegate from Quincy (Mr. Blackmur) giving the Governor and Council the right to retire a judge when he becomes so old that he does not know enough to retire when he can get three-fourths of his salary for his natural life, we can make that amendment; but we certainly ought not to adopt the last half of that amendment, and when the time comes I shall ask to have the question divided on that amendment.

Mr. LUCE of Waltham: I should like to read to the Convention two quotations. The first is from the autobiography of George S. Boutwell, who, after being Governor of the Commonwealth, was perhaps the most prominent figure in the Convention of 1853 and certainly spoke with authority as to the attitude of the people toward the work of that Convention. It is as follows:

After an amendment had been agreed to extending the term to ten years [precisely the proposition now before us] the proposition was adopted. With some misgivings I assented to the compromise. The attempt to change the tenure of the judges was a grave mistake, and it was the efficient cause of the defeat of the work of the Convention.

All the work of the Convention of 1853 went by the board, was rejected by the people, and the efficient cause, according to the leading man in that Convention, was its ratification of the proposal now before this Convention.

Mr. CREAMER of Lynn: I would ask the gentleman whether or not the voters were permitted to vote separately upon each article that was submitted by the Convention that he refers to, or whether they were compelled to accept or reject everything *in toto*.

Mr. LUCE: Both methods were used. There were separate propositions presented, and also a revision of the Constitution.

Mr. CREAMER: I would ask if the voters were permitted at that time to vote upon this question of the tenure of judges separately from any other proposition.

Mr. LUCE: I do not know. I have laid before the Convention the opinion of its leading member, allowing this Convention to attach what weight it may choose to the judgment of the leading member of the Convention of 1853.

Mr. HART: May I through you, Mr. President, ask the gentleman from Waltham whether in his judgment if this proposition now pending were adopted by the Convention it would cause the loss of all the other propositions submitted by the Convention to the people?

Mr. LUCE: I think it altogether probable, or at least certainly possible, for it is a peculiarity to be noticed in the decision of the people upon a group of questions that their attitude toward one strangely affects their attitude toward others. Men go into the booths prepared to vote Yes or No upon some critical question; and having reached there with Yes or No in their minds it is a characteristic observed many, many times that they follow in the affirmative or the negative on all the propositions before them, precisely as happened in 1853.

The other sentence I would read is from Joseph H. Choate. Presumably all would agree that he was the ablest lawyer of his time in the State of New York, and these words were spoken to the people of Massachusetts:

Cling to your ancient system, which has made your reports models of jurisprudence to all the world until this hour. Cling to it, and freedom shall reign here until the sunlight shall melt this bronze and justice shall be done in Massachusetts though the skies fall.

Mr. BAUER of Lynn: Inasmuch as the delegate from Waltham (Mr. Luce) has seen fit to bring the name of Joseph H. Choate into this discussion, I desire the privilege of reading an editorial from the New York "Sun" concerning the attitude of Mr. Choate on this same subject. This is from the New York "Sun" of May 18, 1917, and is as follows:

MR. CHOATE AS A LAWMAKER.

The presidency of a Constitutional Convention has always been regarded as one of the highest honors in American politics. Mr. Choate was President of the Convention which formulated the present Constitution of the State of New York in the year 1894; yet this notable event in his life has hardly been mentioned in the numerous sketches of his career published since his death.

Indeed, so far as constructive work is concerned, Mr. Choate's labors in that Convention probably constitute his greatest achievement. To give form to the fundamental law of a great State is a task worthy of the highest legal attainments. These he devoted to the service of the people in the fullest measure. He was the leader of the Convention not only in name but in fact. His influence was paramount throughout its deliberations. The vast improvement in our judicial system effected by the Constitution of 1894 was largely due to his zealous support of the action of the Judiciary Committee under the chairmanship of Elihu Root. Mr. Choate could remember a time when the New York judiciary had not been all it should be; and it is interesting to note that he lived to acknowledge and assert that in ability, integrity and industry the judges of this State were equal to any like number of judges in the world. This he did in an address delivered a few years ago, at one of the lawyers' banquets in this city.

The Constitution of 1894, of which Mr. Choate may be regarded as the father, established in the fundamental law the principles of civil service reform and further guaranteed the right of home rule in cities. Take it all in all, it has proved so satisfactory to the people that they flatly refused to change it when asked to do so two years ago.

Joseph H. Choate was as successful as a lawmaker as he was in everything else he undertook — and that is saying a great deal.

The Convention will note that Mr. Choate maintained that the judges in New York were equal to any like number of judges in the world. I quote this and call it to the attention of the members of this Convention because it is a direct refutation of what the gentleman from Waltham and others have been trying to impress upon this Convention; namely, that Joseph H. Choate put the seal of his approval only on the system which we have in Massachusetts. It is the most satisfying answer to those who regard the elective judiciary as of a low caliber, and that the elective judiciary cannot be up to the standard of that in Massachusetts.

Mr. Choate's attitude, if I am any judge, is this: That in speaking at the unveiling of the monument to his distinguished ancestor, Rufus Choate, here in Massachusetts, he was complimentary enough to refer in laudatory terms to the system that existed at that time. Although he was a Massachusetts man he preferred to practice under the elective system of New York.

As the editorial notes, he presided at the Constitutional Convention of 1894 in New York, and was a member of the latter Convention two years ago, and he made no effort to change the New York system to that now prevailing in Massachusetts. He was a man of tremendous influence, both at the bar and in the political life of New York State, and Joseph H. Choate would have been able to have brought about a change if a change had been necessary or if a change would have helped the situation in New York in any way. He knew, however, that he was practicing under the very best possible system in this Democratic form of government, and that every day he was meeting the ablest members of the American bar who were practicing under the elective system with their whole approval. If an elective system was good enough for Joseph H. Choate in New York, I believe it is good enough for the members of this Convention, and that if adopted here in Massachusetts we possibly may be able to develop some more lawyers here in this State of the same caliber as Joseph H. Choate, and in my judgment we certainly need them.

Mr. PILLSBURY of Wellesley: I am reluctant to prolong this debate even for a moment, as I am satisfied that the arguments which have now and heretofore been presented by the able members of the com-

mittee on the Judiciary and others against any of these radical and subversive changes in our judicial system are unanswerable, and I have had and still have confidence that the sober sense of the Convention will accept them as conclusive. But highly as I respect and esteem my friend from Quincy (Mr. Adams), I cannot allow the statement which he made here a moment ago to pass unchallenged, for it contains to my mind the seed of most of the popular errors upon this subject. He says in substance that the judges have erected themselves into a third legislative chamber and assumed to themselves the power of vetoing legislation. Conceding his motives to be the best, and his beliefs to be what I know they are, in my view a more misleading statement could hardly be made. We live under constitutional government. The Constitution imposes certain restraints upon the power of all the governmental departments and upon the exercise of the power of the people themselves. In the application and enforcement of those restraints questions are bound to arise as to what they mean, and when, how, and how far they are to operate. Now somebody must decide these questions, and by universal consent the judiciary has been made the arbiter, as it must be. It is not an assumption of legislative power. The judges are there to settle all the doubts as to the meaning of the language of the Constitution and the laws, a strictly judicial duty. The quarrel of my friend from Quincy is not with the judges but with the constitutional system itself, and his attack is upon the constitutional system, and it ought not to be directed against the judges. If we are prepared to abolish the constitutional restraints, very well, though I trust that day will not arrive in my time. Until we are prepared to abandon constitutional government, somebody must interpret the terms of the Constitution, and all men have hitherto universally agreed that there can be no better interpreter than the judiciary. It exists for that very purpose. Nobody else can do it in cases between parties, and there cannot be one construction of the Constitution for the people and another for the government. The only man in our history who ever thought that there could be, or should be, when the judges stood in his way, was Andrew Jackson, and this heresy disappeared with him some fourscore years ago. In the discharge of this duty the judges are of course subject to human infirmity, and it unavoidably results that they sometimes decide a question one way which other men or judges might decide another way. But this is not the ground of complaint against them. The ground is that they have not decided *my way*. The people who complain are the people who do not like the decision. Do they think that a decision by popular clamor or popular influence would be better? No man would submit his personal rights to that tribunal if he could help it, and it would be as vicious, as objectionable, as impossible for public rights as for private rights. To the proper performance of the judicial duty absolute independence is the first qualification. The judges should be as independent of all the people as of any of the people, and nothing in the history of Massachusetts is more to her credit than that she has kept her head above this submerging flood of popular attack upon the judges and resolutely refused to undermine and pull down the temple of justice as the wisdom of the fathers built it.

Mr. WELLMAN of Topsfield: We all desire an honest and competent

judiciary. Nothing can be more important to all the people. The question before us now is a very simple one. Will it make the judiciary of Massachusetts more honest, more competent, if we have them appointed for a term of years rather than for life? Most of the argument that has been advanced against the present system to my mind has little value. It always is true, it always will be true, that the judiciary are not perfect. No system can give us a perfect judiciary. The question is whether there is any evidence that to change the system to appointment for a term of years really will give us a better judiciary. No evidence has been produced here which indicates that any other system than that we now use has given in any other State a better judiciary than we have in Massachusetts, and certainly in many States most of us know by experience that the judiciary is not equal to that in Massachusetts.

There are three clear effects that would be likely to follow from the adoption of the term system: First, the appointing power would have it put up to him that he is appointing for a brief period only, and therefore he need not be so careful as he would be if it was for life, because it will be corrected in a few years if he makes a mistake. In the next place, if you ask a man to go onto the bench for a period of years, many of the men most competent will refuse absolutely to consider the position; and in the next place, as he is human, every man who goes onto the bench, knowing that in a few years his term will expire, will have to consider in every decision that he makes the fact, — it will be in the back of his mind, I do not care how fair or how honest he is, — "If I make that decision I shall have to meet something as to my reappointment." The inevitable result will be, as has been the case in other States, that you will have a weaker and a less competent judiciary, which is the very thing Massachusetts cannot afford to have. Whatever mistakes we have made, and we have made some mistakes, whatever our judges do that is wrong, and they have done some things that are wrong, the States all over the Union look back to Massachusetts and say: "She has on the whole through all the years the best and the most competent judiciary of any State in the Union;" and until somebody is able to prove that the new scheme would help us we are making progress backwards if we change.

Mr. O'Connell of Boston: I should like to ask the member if he realizes that in the Empire State of New York on only four occasions have they ever tried to oust a judge who has given satisfactory service, and that in each instance the people of that State have turned down both leading parties whenever they tried to do so, and that that State gives to the country the clearest proof that a good judge always is approved by the people and always is reëlected?

Mr. Morton of Fall River: I hesitate quite a little to take part in this debate. I am not used to public speaking and this is an important matter and I do not feel that I can do the justice to it that ought to be done.

These various matters relating to the tenure of the judiciary, I think, without exception were all referred to the committee on the Judiciary. Notice was given by them in accordance, I think, with the rules of the Convention, — if not, on their own initiative, — of hearings to be held with regard to these various matters. The com-

mittee heard, heard patiently, heard fully, any one and every one who wished to be heard, and I think it is a fair inference from what took place before that committee that so far as it furnished evidence of any popular demand for a change of this kind in the Constitution of Massachusetts, there was none. The committee, taking that into account, as well as taking their own view of the questions themselves into account, reported with one of them dissenting in two or three matters against any change in the Constitution of Massachusetts in this regard. In regard to three of the resolutions submitted to them the gentleman who ordinarily sits behind me (Mr. Maguire of Boston) dissented. One of those was disposed of at the last sitting of the Convention; all of the others are now before the Convention.

There are, if I have counted right, some seven or eight of these resolutions relating to the tenure of the judiciary in Massachusetts now before the Convention. In only two of them, so far as the record shows, has there been any dissent on the part of any member of the committee from the report of the committee. As to the other five or six, so far as the record of the Convention shows, the report of the committee is unanimous. That, so far as the committee is concerned, is the situation of these matters now before the Convention. I speak of them collectively.

Now, what is the reason why a judge should not be elected? Why should not he be elected just as you elect a Governor, just as you elect the Representatives who sit in this hall, just as you elect the Representatives you send down to Washington? Why should not you elect a judge of your highest court? Why should not you elect a judge of your great trial court? Why should not you elect a judge of the Probate Court, through whose hands passes soon or late the property of every citizen in Massachusetts who owns property? Why should not you elect the judge of your Land Court, who tries the title to your farm, to your home, to the soil that is beneath your feet? Why should not you elect him as well as your Governor and your Representatives?

Well, Mr. President, the answer seems to me to be a simple one: Because the office of a judge is wholly different from the office of a Governor or a Representative to the General Court or to Washington or from any elective office. You elect your Governor to carry out certain lines of policy. You send your Representative down to Washington because you think there he will carry out certain lines of policy. You have this one or that one elected to this office or that office because he represents, according to your view, some line of policy which it would be better for the Commonwealth or for the country to pursue.

So far as the judges of your courts are concerned they stand on an entirely different footing. The judge may have his political views, he may have his socialistic views, he may have his views as to this matter or that matter; but the moment he takes his seat upon the bench he ceases to be a politician, he ceases to be a socialist, he ceases to be a labor man, if he was one, and his only concern is to do justice between man and man. That is the difference, in a word, between your judges and your Governors and your Representatives and your Senators. And being there for the purpose of doing justice and nothing else between this man and that man and the other man, he should be, as our own Declaration of Rights says, "as free, impartial, and

independent as the lot of humanity will admit." So it seems to me, without dwelling on the matter, that that is of itself a sufficient answer to any claim that has been put forward here that the judiciary of Massachusetts should be elected.

There is another reason. For nearly one hundred and forty years, — it has been alluded to and I refer to it again, — the judiciary of Massachusetts by common consent has been, — I hesitate for the word, — but certainly its situation, its position, its standing has been acknowledged by everybody in the Convention and is acknowledged by everybody outside of the State. I hesitate to go farther because I myself have been a member of it and I do not like to dwell too much on a matter of which I have been in times past a part.

Now what are the reasons, what are the reasons that are given for a change in the tenure of the office of the judiciary in Massachusetts? They boil down, it seems to me, to two. One is that you sometimes get an arrogant judge on the bench. Another is that sometimes a man stays on the court longer than he ought. Well, it is possible that a limited term may serve as a corrective in regard to those two things. But I wonder if my brethren of the bar stop to think for a moment of the situation of the judge before whom they are trying their case. He is one man, they are a hundred, a thousand, two thousand, all with causes before the court. Is it to be wondered at that now and then he loses his patience? Is it to be wondered at that he sometimes speaks to counsel or to a party or to anybody else in a manner which one gentleman perhaps should not use to another? Is it any wonder that once in a while a judge does not speak in the way in which he ought to? Are you going to change your system for a thing like that, a system that everybody agrees has worked well for nearly one hundred and forty years? He is arrogant, he is puffed up, you say, with pride of place. Does anybody make that charge seriously against the judiciary of Massachusetts? He may stay there too long, but is not that a thing that you can leave safely to the individual judge himself? Take the list of judges as shown in the Manual for the General Court; run it over. I begin with the Chief Justices in 1775: "Resigned," "Resigned," "Resigned." A judge on the bench realizes when he has reached the limit of his usefulness; and you will find if you will go over the record which the Manual of the General Court gives you, how few of the judges have died while they have been on the bench and how many of them have ceased to hold the office because they have resigned it. They did not wait until they had become incompetent to continue the duties of their office. Once in a while, I agree, a man has stayed there longer than he ought; but compared with the whole number of judges of Massachusetts, of whom there are, if I count right, somewhere from 270 to 300, counting the Justices of the lower courts and the special Justices, — take them as a whole, when they ought to get off they get off, and I think the record confirms that statement.

Then, do you know how long is the average term of the judges of courts of this Commonwealth? I took the Manual of the General Court in 1917 and I went through, according to that, the term for which the judges of Massachusetts had sat. I began with the Court of Common Pleas, existing from 1820 to 1859, when the Superior Court was established, and the average duration of the term of serv-

ice of those judges was four years. What the reasons were which made that the average term for the Court of Common Pleas I do not know, I have not investigated; but if I have figured right that was the average length of their term.

Take the Superior Court, the great trial court of our Commonwealth, which was established in 1859. I computed the average down to 1917. There are members, of course, upon it now; I did not include those. The average of the others was eleven and three-fifths years. Leaving things to the course of nature, leaving the judiciary of Massachusetts just as it is and letting nature take its course, you will get only an average term of a little over ten years for the judges of that court. That is from 1859 up to the present time; and as I told you, I have gone back to 1820 with the Court of Common Pleas. I have taken the judges of the Supreme Judicial Court and have computed their service from 1775, when John Adams was appointed, down to 1917, and the average of service there was ten years. What is to be gained by limiting the tenure, as you propose to do, to ten years or five years or seven years, or in the case of the Supreme Judicial Court not at all?

There is a good deal more that can be said about this matter. But it does not seem to me, in the first place, that any necessity has been shown for this change. In the second place, it does not seem to me that it has been made to appear that it is going to result in an improvement of the judiciary of Massachusetts. And in the third place, which perhaps is included in the reasons that I already have given, it does not seem to me that the chances that you will get better men for the courts of the Commonwealth, if it is understood that a young lawyer at the end of five or seven or ten years, if he goes upon the bench and throws, as he must, his practice one side, may then be obliged to take it up again, — that you will stand the chance that you do now of getting good men upon the bench.

It is not in any one of these cases an appointment for life. It has been erroneously stated, inadvertently stated, that the judges hold for life. They do not, Mr. President; they hold during good behavior. And why should they not hold during good behavior? How can you make a judge so free, so impartial, so independent, as you can by saying to him when he puts on the judicial ermine: "Stay there, do your duty, deal justly so far as in you lies between the parties that come before you, and you need fear neither the politician nor any other power within the limits of the Commonwealth of Massachusetts." [Applause.]

The amendment moved by Mr. Anderson of Newton was rejected.

The amendment moved by Mr. Blackmur of Quincy, — to substitute a new draft as modified by Mr. Edwin U. Curtis of Boston, — was adopted, by a vote of 107 to 69.

By a vote of 66 to 128, the Convention refused to reject the resolution as amended Tuesday, June 18, and it was ordered to a second reading (see No. 380).

The resolution was read a second time Thursday, July 25, 1918.

Mr. Paul R. Blackmur of Quincy moved that it be amended by substituting the following new draft:

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment:

Article 1 of chapter III of part II of the Constitution is hereby amended by the addition of the following words: and provided also that the Governor, with the consent of the Council, may after due notice and hearing retire them because of advanced age or mental or physical disability. The General Court may provide pensions for judges so retired.

Mr. BLACKMUR: This substitute resolution which I now offer is in the nature of a perfected amendment with some slight changes in its provisions which I have adopted upon suggestion and after conference with the learned chairman of the committee on the Judiciary, Judge Morton of Fall River.

To begin with, the title of the resolution upon which we are acting, namely, "Resolution providing for the appointment of judges for specific terms," is, as you see, a misnomer. That was in fact the title of document No. 193 for which my resolution, document No. 380, was substituted, and therefore in the resolution now proposed I have described more accurately what follows as a "Resolution relative to the retirement of judicial officers."

Again, my resolution did not seek to take away any of the constitutional remedies for the retirement of judicial officers now in force, but to add a provision simple in its method and reasonably expeditious in its workings, which would permit the retirement of judicial officers incapacitated by advanced age, mental or physical disability; and so this resolution adds to the present provisions of the Constitution five lines:

and providing also that the Governor, with the consent of the Council, may after due notice and hearing retire them —

meaning judicial officers before referred to in this article —

because of advanced age or mental or physical disability.

And then follows the sentence:

The General Court may provide pensions for judges so retired.

It may be claimed that judicial officers may be retired now by the Governor with the consent of the Council upon an address to both Houses of the Legislature, and then a petition by the Legislature to the Governor and Council.

The Senate also, under Chapter I of Section II, Article VIII, upon impeachment may remove a judge from his office. Judge Prescott in 1821 was tried by the Senate as a court of impeachment and removed from the office of judge of probate for the county of Middlesex. Judge Loring, judge of the probate court for the county of Suffolk, and Joseph M. Day, judge of probate and insolvency for the county of Barnstable, were removed from office by the Governor and Council on address by the Legislature. Mr. Justice Bradbury, a judge of the Supreme Judicial Court, was removed in 1803 on account of disability. It appears that he was insane and the Governor and Council acted on an address by the Legislature.

It took over two years in both the cases of Judge Loring and Judge Day before their removal was effected, and in the case of Judge Bradbury, to be sure, not so long a period.

Judge Bradbury's case well illustrated what may happen in a case where it is perfectly obvious that the judge should not hold office

longer. Mr. Justice Bradbury was insane. Should a similar case arise at the present time we would have to wait until the Legislature was in session, namely, some time next January, before a petition could be introduced. It would take months, probably, before the matter could be dealt with properly and an address sent to the Governor. Even after that the Governor and Council would have to take some time to act upon the matter properly and intelligently before it could be returned to the Legislature.

Under the proposed method the Governor and Council always would be available, although no one would expect them to act with undue haste. A case such as Judge Bradbury's arising at the present time might be determined so that a removal could be effected and an appointment made to fill the vacancy in time for the appointee to take up his judicial duties before the beginning of the court year in October. This would be impossible under the present methods.

In the proposed resolution you will observe that there has been inserted a provision suggested by my friend from Brookline in the second division (Mr. Williams), who offers an amendment printed in the calendar, namely, that as a prerequisite to action by the Governor and Council due notice and hearing must be given. The provision, which I have accepted, is placed there for two purposes: First, to prevent any judge being railroaded out of office without an opportunity of knowing in advance and having a hearing accorded him; and, further, to prevent the Governor and the Council from acting hastily or in possible collusion with any judge without notice and hearing of which the public should have some knowledge.

As to the other amendments printed in the calendar, I deal now with the amendment printed under the name of Mr. Swig of Taunton, the purpose of which is to strike out the words "advanced age, mental and physical disability" and to insert "mental, physical or judicial inability." I certainly do not advise that the Governor and Council should be the sole arbiters of the judicial capacity of our judicial officers after they have been appointed and have served in that capacity.

Mr. GEORGE of Haverhill: I appreciate the delegate's learned thesis on the judiciary, but he asked a question as to how we could tell whether a man was unfit temperamentally. Now I think we can answer it in this way: A judge who comes in Monday morning feeling cross and crabbed and railroads everybody to jail on general principle, and the next morning comes in feeling good natured and lets all the guilty go scot free, — I think that is an indication that he temperamentally and judicially is unfit to perform the duties of his office.

Mr. BLACKMUR: The remarks which the gentleman offered in the guise of a question perhaps were not intended to be answered by me.

As to the amendment printed in the calendar under Mr. Bodfish's name, adding the words:

> but no judge so retired shall receive out of any fund to which he has not contributed a pension exceeding the rate of one thousand dollars per annum —

I cannot accept that personally, because I believe, in the first place, that it should be left entirely to the Legislature for action. It seems to me highly injudicious to adopt any yardstick to measure in all cases

and for all times the proper or adequate compensation to be given all judges retired under this article at the present time and in the future. We all know that the purchasing power of a dollar yesterday looks like fifty cents to-day, and to-morrow or next day it more nearly may resemble the nimble quarter. I do not believe that we should lay down in the Constitution any proposition that $1,000 is the full measure of the compensation or pension of any judge, no matter what great service he may have rendered the Commonwealth.

Mr. MORTON of Fall River: The gentleman from Quincy (Mr. Blackmur) has stated correctly my own attitude in regard to this matter. I think I may say also that, so far as I am informed, he has stated correctly the attitude of the committee on the Judiciary. The resolution which has been offered, and which he has read, meets my own approval. It meets a situation which, as the Constitution now stands, is not met as fully as it seems to me it should be. Therefore I venture to hope that it will be adopted in the shape in which the gentleman from Quincy has presented it, free from any of the amendments that have been offered.

Mr. David Mancovitz of Boston moved that the resolution be amended by inserting after the word "Council," in line 3, the words "shall appoint all Justices of the police, district and municipal courts, or such other courts as the Legislature may establish in their place, for a term of seven years, and"

Mr. MANCOVITZ: Since the debate on this proposition some time ago, some delegates to the Convention have expressed the desire for opportunity to vote upon this question. A great many delegates believe in a change, but do not want to go so far as to change the entire system, affecting the Supreme Judicial Court and the Superior Court, but they do believe there ought to be a change in the present method of our inferior courts, as the municipal, the police and the district courts.

In examining the Constitution you will find nowhere a reference to municipal, police or district courts as a judicial office. The nearest to it we find in our Constitution is a reference made to the justices of the peace, who performed the functions of the present police, district and municipal courts. You will find the original Constitution provided that those officials, while they acted as judges, should be appointed for the term of seven years. There is no reason why the lower court judge, who deals with the great mass of the people, should not be appointed for a short term, so as to be kept in close touch with the people. I believe the amendment I offer at the present time meets the approval of a great many of the delegates. I do not seek to disturb the suggestion offered by the gentleman from Quincy (Mr. Blackmur), in retiring the judges who become incompetent by reason of old age or mental incapacity or even judicial incapacity, as he well knows, and I well know, of men on the bench judicially unfit to hold the office, by temperament or otherwise. As is well said by the gentleman from Haverhill (Mr. George), one may come into court and find a judge suffering from dyspepsia, and he will hang you, while after dinner he will regret it and give the next fellow the benefit of his doubt. I hope, therefore, that you will adopt this amendment.

Mr. SHEA of Dalton: The gentleman who has just spoken on his

amendment (Mr. Mancovitz) appeared before the committee on the Judiciary in favor of a resolution which was similar in many respects to the amendment which he now advocates. That committee gave him and a few others with like proposals all the time they wished and carefully considered the whole matter at great length. It is significant, and you doubtless will be interested to know, that there were very few who appeared before that committee urging the viewpoint of the gentleman from Boston (Mr. Mancovitz). He told us, as he now tells you, that the reason the judges of district or lower courts ought to hold office for a term of years, instead of for life, is because these courts are very close to the people and, as far as I have observed, he never has advanced any other reason.

He is right in his premise that the lower courts are very close to the people, and it equally is true that for this reason alone they should assume just as much importance in our judiciary system as the higher courts, — and I believe more importance. It is self-evident that the fact that the lower courts are closer cannot be urged as a sound reason for shortening their tenure.

Your committee disapproved of the original proposition. The amendment offered by the gentleman from Quincy (Mr. Blackmur) meets with their favor, — nothing more and nothing less. They do not urge it, though they are willing to accept it if it is the sense of the Convention. I say we do not urge it, because there does not seem to be any need of such an amendment. As far as we could ascertain, our judges have retired at that time when they begin to feel themselves unable to perform their very arduous duties.

As to the question of unfitness, we think the amendment is vicious, because it cuts into the groundwork of the whole judiciary system. Who is going to say that a judge is unfit? You will bear in mind that before one can be appointed to the bench a Governor and Council must say he is fit. Would you permit the next Governor to say the same man is unfit? We believe this is a dangerous policy, because it affects the independence of the judiciary. It places each and every judge within the power of every Governor. We all are agreed it would be an excellent act to remove an unfit judge, but we fear the danger in the threat held over the heads of the judges. It may be real or fanciful in the minds of the judges, but in either case it might interfere with a just decision. It was for these reasons, with others given at stages of the debates on other judiciary resolutions, that your committee is opposed to these amendments affecting the short terms of the judges of the lower courts and the amendment directed toward the fitness of all judges.

Mr. O'Connell of Boston: It seems to be necessary to jump up quickly in order to be able to prevent the gentleman from Somerville (Mr. Chandler) from being recognized to move his customary previous question. I regret that the gentleman from Somerville feels it necessary so often to move the previous question, particularly on subjects that have not been debated thoroughly. It seems to me particularly unfortunate that on a question so important and far-reaching as that concerning the judiciary, there should be any display of impatience or any desire to have it gotten out of the way without an adequate and complete discussion; and members of this Convention, even though they disagree with me, must admit that there has been

an effort on the part of those who are opposed to any change in the judiciary to shut off and prevent the question from being properly presented. It does not seem to be the right thing to do.

The whole history in this Commonwealth of questions that have affected the judiciary seems to be mixed up and disposed of through some legislative chicanery as though men were afraid, for some mysterious reason, to discuss the question. All I ask is that ample time be given to every one to present his views on this subject.

I have talked twice before, and I am not going to tire this Convention by rehearsing what I already have said on the prior occasions. Two amendments have been offered by me, and at the present time I move them both. The first one that I wish to discuss is as follows: It will amend the proposed amendment to the Constitution by striking out lines 3 to 6 inclusive, and by inserting in place thereof the following:

All judicial officers shall be nominated and appointed by the Governor by or with the consent of the Council for a term of ten years, and they may be reappointed at the expiration of such term.

This subject has not been voted on in this form before, owing to the legislative practice that has prevailed in this Convention, and it would seem as though gentlemen who may have honest doubts as to the desirability of an appointed judiciary should be able to have the subject adequately presented to them that they may be given an opportunity of expressing themselves upon it by a vote. I discussed the question of an appointive judiciary last summer during the debate on the initiative and referendum, and my views are well known to you and are incorporated in Volume 2 of the debates of this Convention, and may be found on page 970, so that it is unnecessary for me to repeat them now.

Permit me, however, to call your attention to a few salient facts. Forty-three States in this Union elect all their judges and the balance use the appointive system; and to repeat again, Massachusetts is the only State that has a system of life tenure. No one wants an unfit judge and none of us desires a judge who is incapable of performing the great, honorable and important work that is imposed upon him when he receives a commission as a judge. As I pointed out in the first reading of this resolution, at first it was decided by the Convention of 1780 to recommend to the people that the judges holding commissions below that of the Supreme Judicial Court should hold their commissions for a limited tenure. Subsequently, this provision was reconsidered and by the small vote of 62 out of 86 members, although the whole membership was 400, as is disclosed on page 116 of the journal of the Convention of 1780, when it was voted that they should hold their commissions for life. I am calling this to your attention in this manner in demonstration that there was not a dominant feeling that judges of lower courts should hold their commissions for life. The system did not work satisfactorily and in 1853 the Convention of that year passed a resolution identical with the one which I have just offered. However, it was contained in proposition No. 1 which was submitted to the people and which contained the entire form of government that was submitted to the people so that the people never had an opportunity of voting on the concrete proposition as to what they desired in reference to the judiciary. Proposition No. 1 on which they voted contained 13

pages of closely printed matter and the vote on the question was 63,222 in favor, as against 68,150 opposing. The principal reason why proposition No. 1 of the Convention of 1853 was not adopted by the people was that the question of representation became the overshadowing and all-important feature of the proposition because the plan that was submitted lessened the representation which the little towns throughout the State, particularly on the Cape and up in the western part of the State, had at that time. These little communities feared that in the cutting down of their representation, they would lose much of their power and be neglected by the superior representation from the larger towns and cities. If it had not been for that one particular feature that unfortunately was incorporated into proposition No. 1, the whole proposition would have been accepted by an overwhelming majority, according to the best opinion of those who analyzed the situation at that time. Let me remind the members that this is a subject that the people thoroughly understand and will not be confused as to its meaning. If the people were permitted to vote on it, there would be less misunderstanding as to whatever they may say than upon any other question that we can submit, because it will be less technical and not susceptible of any misunderstanding. Why, a short time after this subject was considered at the time of its prior reading, there was a meeting of the board of trade of one of our neighboring cities, — a city known to be conservative and that has sent men to this Convention mostly of the Republican faith. The local judge evidently had followed the debates in the Convention rather closely and had asked his clerk to find out from the members of this Convention what they had against the judge, inasmuch as they voted in favor of the resolution which would change the system. The clerk asked one of the delegates and was told that the delegate had nothing against the judge personally, but that he believed in the suggested change in system and was convinced that judges should be responsible to the people, and on that principle alone he had so voted. The conversation between the delegate and the clerk of court was overheard by some of the other members of the board of trade and it became a very interested and animated subject for consideration and discussion; and in that very gathering of business men, not one of whom was a politician but composed of men who were looking for the best interest of their community, there was not a dissenting voice among all those present, except the clerk, but that judges ought to be appointed for a limited tenure. Those business men felt that the judges should be responsible to the people, just the same as all other officers are, and let me remind you gentlemen that, although that may be a single straw, nevertheless, it indicates the way in which the mind of the people is working, and regardless of political faith the voters of this Commonwealth are nearly of one mind on this great question. Discuss the subject with any man who is not a lawyer or a judge, and he will tell you immediately that he cannot understand why there should be any law that should put a man practically above the law by giving him a life appointment.

The people believe in a limited tenure; they have confidence in their own sovereign judgment; they desire that their judges shall be responsible to them. They do not wish men to sit in the position of judge such as has been described here as cranks and who may get

up one morning with a sick headache and dispose of a certain kind of a case by giving a criminal the maximum sentence, while on the next day, feeling entirely different, the same kind of a criminal would be given his freedom. Inhabitants of this State want exact justice, and they demand that there be given to them the very highest form of administration of justice.

Let us adopt this resolution and change our present system to that of a limited tenure. No good judge will be denied reappointment by any Governor. No Governor would dare refuse reappointment to any good judge. The people would not tolerate it. The proposed system, however, would keep the judges in a state of mind whereby they would endeavor and strive at all times to do the very best that was within them, and when a judge tries to do his best, we all know that the people will honor and applaud him and sustain him against any power or cabal or combination in this Commonwealth, be it religious, political, financial or racial. A ten-year term for our judges with the possibility of reappointing will insure greater care on the part of the Governor who makes the appointment. It will guarantee that those who are appointed judges will improve every minute of their time in perfecting themselves and will reasonably justify us in believing that at all times we will have the very best possible talent sitting in judgment of the lives and property of the people of this Commonwealth. May I not remind the members of the Convention that as far as the clerks of the court are concerned, we have them elected for the Superior and the Supreme Judicial Courts, whereas in all lower courts, they are appointed by the Governor for a limited tenure? And surely the clerks of our courts have been just as efficient as have the judges, if not more so. Every practicing lawyer knows that the judges of our lower courts rely to a very great extent on their clerks for council and advice in running the courts. No one has been heard to raise a cry that there has been any abuse of the power of the Governor in appointing for a limited tenure all the clerks of all the lower courts in this Commonwealth. And it is a successful practice as far as it concerns the clerks. Is it not fair to argue that it would be just as fair and satisfactory if it was applied to the judges? It is unfortunate that we have so many lawyers in this Convention, because as a rule lawyers do not come forward with that bravery and courage in the expression of their individual opinion as it concerns the judges before whom they practice, as they really should. They are unfair to themselves but more particularly to the judges. It has been well said that the curse of great leaders is the sycophancy of courtiers; and by the same token, much of the weakness of our judges is the flattery and the subservience of lawyers who are appearing before them and who hope, by their flattery and their subservience, to secure some little favor from those judges. Such an attitude does no credit to the legal profession, and undoubtedly is one of the reasons why people are so reluctant to go to court. Every practicing member in this Convention has encountered, time after time, people in all walks of life who are afraid to go to court to present their claims because of a feeling of distrust against the courts and those who are administering justice. I need not mention the many instances of the expression of popular distrust of the courts, other than to call attention to two historical instances.

In the fifteenth century, Jack Cade came to London with his army from Kent, and as soon as he crossed the river he said: "Kill all the lawyers," and again: "Some of you go to the temple and tear down the Inns of Court;" and they did tear them down and they burned the valuable library that had been gathered together after years of care and toil and that has been an irreparable loss to English jurisprudence. We once had a rebellion here in Massachusetts known to history as Shays's Rebellion, and the battle cry was "Close the Courts!" The spirit of unrest which has hovered over this country for the past twenty years is very sensitive about the courts. The masses of the people have felt that great wealth dominates our judges through its ability to employ adroit, clever lawyers who are able to hoodwink and influence the courts in favor of their powerful clients. Where there is so much smoke there must be some fire. Let us not, then, pass this subject by without profound reflection. Do not ignore a real demand on the part of the people. It must be admitted that there is unquestionably a very large number of people who would like to vote on this question; and if there is a large portion of our people who desire to vote on this question, it is the duty of this Convention to give them an opportunity of doing so. The gentleman from Quincy, during the debate on this subject at its last stage, quoted John Boyle O'Reilly, the beloved Irish poet, exile, and lover of Massachusetts and her institutions. Let me in closing also quote O'Reilly to you:

> Do not be deceived. Put your ear down to the rich earth, and listen to the vast gurgling blood of humanity, and learn whither it strives to flow and what and where are its barriers. This is the culture worth getting, the culture that wins the love and shout of millions instead of the gush and drivel of tens. Love and hope and strength and good are all in the crowd, — and not in the diluted blood of æsthetic critics.

Mr. Williams of Brookline: I offer the amendment printed under my name in the calendar, but in the event of the substitute of the gentleman from Quincy (Mr. Blackmur) being adopted, then I shall ask the privilege of withdrawing it.

> The amendment moved by Mr. Williams was to insert after the word "may," in line 4, the words ", on due notice and hearing."

Mr. Kilbon of Springfield: I wish to make just one observation, and it will take only a word or two. In speaking a few moments ago regarding the amendment offered by the gentleman from Boston in the first division (Mr. Mancovitz), the gentleman from Dalton who sits directly behind him (Mr. Shea) said that there had been very little to show any need for the suggestion. He said the cases are very few in which there is any incompetency in the minor judicial officers. I am not quoting him exactly, of course, but you will recall his words, very likely, more nearly than I do.

I wish to submit to the Convention, for its careful consideration, the suggestion that if the cases are very few, — of course they are very few, — if the cases are very few, but still exist, that it is the business of this Convention to give very careful thought to the curing of the very few cases. If there is any way in which we can bring the judicial system of our Commonwealth a little nearer perfection, — and I am glad to express my confident belief that it is very near perfection now, — if there is any way that we can bring it nearer to

perfection we ought to find that way. I take it that the question regarding the amendment offered by the gentleman from Boston in the first division (Mr. Mancovitz) is simply this: Whether, in the judgment of the delegates in this Convention, the adoption of a term of office limited to seven years, or any number of years, will have a tendency to lead men of ability and skill, such as we desire to see in that office, to decline to serve. It may be that that is so, and that therefore the adoption of such an amendment probably would reduce the capacity and the standard of that judicial office. On the other hand, if it be true that the adoption of the term of office of seven years, if that be the proper term, — the number of years is perhaps not very important, — the adoption of a limited term of office will enable any Governor having charge of the appointment of judges to correct the mistakes of his predecessor, and to see that a man who has not been doing good work is replaced by a better man, then we should vote in favor of that amendment.

After thinking the matter over, and giving to both sides balanced attention, so far as I am able to do it, I have reached the conclusion that the suggestion I have just made is more likely to be correct: that the possibility of making a change when an office is not well filled is more to the advantage of filling the office well than the possible deterring of men from accepting the office by the fact that the term of office is limited. I shall be very glad, therefore, to give my vote for the amendment offered by the gentleman from Boston in the first division.

Mr. MOYNIHAN of Boston: I shall not hold the Convention long. I have had seventeen years' experience in the courts of this Commonwealth, and I have sat in this Convention and listened day in and day out to different members talk of how well our forefathers had builded when they gave us this original Constitution. They did build well, and in that building they said that judicial officers should hold tenure for good behavior, and I believe in that. But at that time, when they builded, they spoke of justices of the peace, and this is their language:

> In order that the people may not suffer from the long continuance in place of any justice of the peace who shall fail of discharging the important duties of his office with ability or fidelity, all commissions of justices of the peace shall expire and become void in the term of seven years from their respective dates; and, upon the expiration of any commission, the same may, if necessary, be renewed, or another person appointed, as shall most conduce to the well-being of the Commonwealth.

Now, let us follow out the analogy of the forefathers. They knew at that time, as well as we know now, that they wanted to keep those higher courts away from the electorate or the people. They felt therefore that the higher courts should be appointed for a tenure of good behavior. But what are our lower courts? Are they not simply the outgrowth of the justices of the peace? The police court to-day is nothing more or less than the justice of the peace of the days of our forefathers, because as we became more cosmopolitan we have substituted for the justice of the peace a trial court. It is a justice of the peace as our forefathers knew it, under a new name.

If our forefathers builded well, why should not we emulate their example? I, for one delegate, have absolute confidence in the Governors whom I have known in my experience in this Commonwealth.

I say to this Convention, and I say to you in all sincerity, that there is not a Governor whom I ever have known who would remove a good man and put a bad man in his place, in any judicial position, even in the position of justice of the peace. Therefore if you are going to be consistent, if you are going to vote on this proposition as you think in private, I know that the sense of this Convention will be that the amendment of the gentleman in the first division, limiting the tenure of office for judges of police and trial courts to seven years, will be adopted.

Mr. Bodfish of Barnstable: When I gave notice that I should move the amendment printed under my name I did it for the purpose of clearing up the situation, for the Convention then had acted on the question of pensions in three different proposals, from three different points of view. Those who recall what I had to say when the report of the committee on Social Insurance was being considered will know that I do not favor this limitation which appears in the amendment which I have given notice that I should move. The situation that I wish to clear up is this: When we were considering the question of limited tenure of judicial offices we showed a disposition not to fix any specific age for the retirement of judges. We did recognize, however, that there were cases when judges held on too long, and it was to reach those cases that the proposition before us was adopted. But we did not adopt that until we had coupled with it the provision that the General Court might provide pensions for judges so retired.

I submit that it lay in my mind, as I think it must have lain in the minds of most of you, that such pensions as were contemplated then by us were to be adequate pensions, pensions like those which had been granted to judges now retired. That being the case, it seemed to me that our subsequent action should be brought into contrast with it. I think we realize the difficulty of getting Governors to remove judges; and to make Governors less reluctant to remove judges, and to make judges less reluctant to be removed, we thought that the provision of an adequate pension might help the situation out. But we came to No. 279, and then we adopted a resolution to prevent class distinctions and special privileges, limiting the pensions to $1,000 a year.

These two propositions are in conflict. I will not take time to discuss No. 279, because this morning it has been discharged from the calendar and recommitted to the committee. But we still have the proposition of a pension to deal with under No. 280, the report of the committee on Social Insurance. My point of view as to constitutional matters was referred to this morning by the delegate from Lexington (Mr. Clapp). Such views as I hold can be found expressed by such leading Americans as Washington, Marshall and Lincoln. I agree with the suggestion found in those words which Washington put into a letter to a friend, in which he said:

> To me it is a most extraordinary thing in nature that we should have confederated as a Nation and yet be afraid to give to the rulers of that Nation, who are the creatures of our making, and who are amenable to us, sufficient power to direct and order the affairs of the same.

I would give to the executive sufficient power to administer the laws. I would not give him control over legislation. It is at this

point that I disagree with the English system. Likewise I would give to the Legislature full and complete authority to deal with those questions whose solution depends upon constantly changing conditions, such as pensions, insurance and compensation. I do not think we ought to deal at all with the question of pensions in connection with this proposition. I think the whole matter after the word "disability" should be stricken out, and that the question of pensions, insurance and compensation should be dealt with in a comprehensive amendment such as that which I have recommended under No. 280, and which you will find printed in the calendar to-day under my name.

With this statement, I think the Convention will understand the purpose I had in mind, and therefore I shall not move my amendment. I ask permission to withdraw it.

Mr. MONTAGUE of Boston: I am very much opposed to any change in the method of the selection of our judges here in Massachusetts, but I long have thought there ought to be a somewhat easier way for the removal of a judge who has become incapacitated, but who does not know it, or, in a few cases, who is unfit to hold the position. Therefore I am in favor of the resolution now before the Convention allowing the Governor and Council to make such removals. It is hard to see just where we are at with this resolution and the various amendments. It seems to me that the amendment of the gentleman from Brookline (Mr. Williams), which provides for a hearing, is fair. It also seems to me that the amendment by the gentleman from Boston, Mr. O'Connell, — the first amendment, not the one he talked about, but the first amendment, which brings in some word like "unfitness," — perhaps that is not the right word, but some word of that kind, — is a desirable one to have.

With reference to the pensions, it seems to me better to leave that matter as the resolution now has it, allowing the General Court to provide pensions, for this reason: I can conceive of a man being removed from the position of judge who deserves no pension at all, even $1,000 or $600 or anything else. I believe in leaving it to the Legislature to provide the pension, if any. That is the way it stands now. I would not make removal necessarily carry a pension.

Mr. BLACKMUR of Quincy: Does the gentleman understand that the substitute resolution which I offered when this matter came before the Convention to-day contains the very words of Mr. Williams' amendment, namely, only after "due notice and hearing" shall be given?

Mr. MONTAGUE: I did understand that, but it seemed to me that the resolution of the gentleman from Quincy contained some things which made it less simple to me than the way I have put it. But if the Convention understands that that is so, if the amendment of the gentleman from Quincy contains the exact thing that I have suggested, that is entirely satisfactory to me, unless it has something in it — which I thought it did — which I did not like.

On the whole issue, I suppose every lawyer of any such number of years' practice as I have to plead guilty to, came to this Convention with his mind made up on the general proposition of how our judges should be selected. I did; and I do not see how any man who has practiced many years could fail to have arrived at a conclusion before he came here. My practice, although small compared to that of

many lawyers in this Convention, has happened to lead me into many different States of the Union; I think at least one-half. One thing that led me to make up my mind before I came here was the unanimity of opinion among the lawyers whom I met in those various States as to the wisdom of the Massachusetts method of the selection of judges. I never have met a lawyer in any of those States who did not speak with the highest respect and approval of the method of Massachusetts, and who did not wish there was the same system in his State. I think most of our lawyers have had the same experience, wherever they have been.

There is one argument, to my mind, in favor of the election or appointment of judges for limited terms, and that is that it would help the lawyers.

Take the amendment of the gentleman (Mr. Mancovitz) with reference to municipal court judges. The thing that would happen would be that a young fellow would get on the bench, stay during the term, go off, and, with the added prestige, earn more money than he probably could earn if he had been on the bench. I think that would be true also of the higher courts. In fact, one lawyer spoke to me, and hoped that I would favor the method because it would tend to increase the fees which the lawyers might earn, and he cited New York, where he said the custom was for a man to go on the bench, and then when he went off if he was wise and made friends while he was on the bench, he would go off the bench and make three or four times as much as he could if he never had been on; and that tended to raise the whole level of the fees of the profession. I think there is something in that. But your committee on Judiciary preferred to recommend what in its opinion would be the best thing for the people as a whole, those who have the necessity to go to the courts, rather than what might be to the advantage of the lawyers who practise in the courts.

Mr. George of Haverhill moved that the amendment moved by Mr. Blackmur be amended by striking out, at the end thereof, the words "The General Court may provide pensions for judges so retired" and inserting in place thereof the words "upon the terms and conditions that may be provided by law for the voluntary retirement of judicial officers."

Mr. GEORGE: I do not rise for the purpose of attacking the judiciary. During the past twenty-five years, every time I have had an opportunity to vote on a proposition that had a tendency to weaken our judiciary, I always have voted against it. I am opposed to the election of judges of the Supreme Judicial Court or the Superior Court. I do not believe that we should attempt to remove politics from the appointment of judges by putting the judges into the elective system, where politics would be the determining factor in choosing a Justice of the Supreme Judicial Court or the Superior Court. But I must confess that there are some objections to the present situation. Now and then there have been men appointed to the bench, especially to the lower courts, who have been unfit temperamentally. We all know what they do in every other line of business where they find a man who is unfit. If he was in the post-office, selling stamps at a window, and he continually was getting into trouble with everybody who wanted to buy a three-cent stamp, they

would put him somewhere else. If he was in any other walk of life and constantly in trouble, such as a conductor on a street railway car, they would find a place to put that man. But if he once gets on the bench there is no way of getting rid of him. He stays.

While we have had exceptionally good judges on the Supreme bench, I wish I could say the same thing about the Superior Court and feel that it was true. There have been appointees who by their very conduct have injured the standing of the court. Every time you have a judge on either the Superior Court or a lower court, whose conduct is such that it brings constant criticism and contempt, you injure the court. One judge of that kind will do more mischief than a dozen or fifteen good judges possibly can do. I think that there ought to be a way to get rid of a man who is unfit temperamentally. Therefore this resolution does not go far enough, but I think it can be amended on the next stage.

My amendment proposes this. The delegate from Quincy (Mr. Blackmur) insists that we shall say here that these judges, so removed or so retired, shall receive a pension. I should like to know where else in the Constitution you can find any such statement about any court or any judges. We have another proposition here, which is coming up later, which may change the whole aspect of the question of pensions. Suppose we decide that the judges ought not to have pensions; then the judge who voluntarily resigns cannot have a pension, but the old judge who stays on, — and probably they all will stay on until they are removed, — then he could draw a pension if the proposal of the gentleman was accepted.

I propose to strike out that part where it says this particular kind of judge shall receive a pension, and say that those judges, when they are forced to retire, can retire upon the same terms and conditions that may be provided by law for the voluntary retirement of judicial officers. If they do pay pensions to judges who voluntarily retire, then the Legislature may provide for the judge who is removed by the Governor and Council. On the other hand, if there is no pension paid to a judge who voluntarily retires from the bench, then the judge who does not know enough to get off when he is told to will have to get off without a pension. In other words, my suggestion does not bring pensions into the Constitution.

I am in favor of the independence of the judiciary. That is a much misunderstood word. A man can be a gentleman if he is independent. He is not obliged to be mulish. A man is not obliged to be arrogant and set himself against reason in order to show his independence. The independent judge whom we want on the bench is the man who is willing to listen, the judge with an open mind, who will hear all the facts and without outside influence judicially determine the case with equity and right between the parties. That is the kind of independence we want.

We do not want to go so far as to say that we do not dare to settle this proposition. It is our business to settle it. I know there are 150 lawyers in this Convention; I assume that they will have a controlling vote on this proposition. It is up to them to give such reasonable latitude that a Governor and Council may retire a man whose presence on the bench is objected to by reason of his being temperamentally unfit or mentally unsound.

Mr. UNDERHILL of Somerville: The Convention made up its mind some weeks ago as to what it is going to do about the judiciary; consequently I move the previous question.

Mr. ADAMS of Quincy: In regard to this question I somewhat agree with the last speaker, that the Convention probably already has made up its mind, but I have one word to say on the subject. It will not be very long.

I have known the judiciary of Massachusetts in all its gradations for nearly fifty years. During that time I may say that I never have known a man on the bench who, however I might feel about his capacity, I thought was unfit to be a judge; that is to say, who morally was not fit to be a judge. On the whole, I know no class of men who have inspired me with a greater respect than our judges. But I wish to say that there is no human being in the world who I imagine is incapable of improvement; that is to say, who can do, if he is not under pressure, as well as he can if he is under a certain amount of pressure. You take every profession with which I ever have had to do, and the body of that profession I think always improves if it is put under a certain amount of pressure.

For example, I remember when I was a young man promotion in the army and navy went entirely by seniority. Now the officers in the army and navy have to perform a certain amount of service, to show a certain fitness, before they can be advanced in rank. I have no doubt that that has improved the quality of the service. I myself have no doubt also that the officers of the army of the United States rank higher, as a rule, than those in any other service in the world. I have seen officers in many services, and I do not think that there is any class of men in the service of any government who rank higher than our officers do.

You may take our professors, the professors in our colleges. Take, for instance, Harvard College. I have known professors of Harvard College now for many years. They are as a whole men of eminent qualities. I have the highest respect for them. But I do conceive that they have been improved by the measures which have been introduced during my lifetime, which have given them a limited term of service. That limit is not fixed for the purpose of driving them out of the service; it exists not for any such reason as that. It is put on as a kind of stimulant, and it is the sort of stimulant that I am inclined to think is advantageous for us all. And I do think that if the same stimulant were applied to our judiciary it probably would improve it in all its parts. It is not that you want to get rid of your judges, but it is that you would give them something to look forward to, some standard to maintain, in the future.

Mr. BALCH of Boston: With all the foregoing debate on the subject of the judiciary, I have not had an opportunity to make my position clear, but I wish now to make a few remarks confined to the revamped proposition for seven-year and ten-year judges. My friend from Boston in the first division (Mr. Mancovitz), responsible for the proposition for seven-year judges, has introduced us to his honorable friend the well-known judge, who will hang us if it happens to be before lunch or acquit us if it happens to be after lunch. Now I wish in my turn to introduce you to an equally well-known character. I refer, of course, to the judge who will hang us if we happen

to be Democrats and acquit us if we happen to be Republicans. I desire to point out a little, simple, mathematical proposition applicable to these two famous judges. With the judge who hangs us before lunch and acquits us after lunch any one of us coming before the courts, no matter before what judge we are tried, will stand what is called in the slang of the day at least a 50–50 chance; but if we have come before our honorable friend the judge who hangs us if we are Democrats and acquits us if we are Republicans we may not stand any chance at all, and if the whole bench happened to be filled with these well-known gentlemen, no matter which judge we came before or at what time of day, we might not stand any chance at all.

I do not need to point out to this Convention that neither of these judges any more exists in nature than the unicorn or the hippogriff. They are purely imaginary monsters. Nevertheless, behind this little piece of nonsense there is a cold basis of hard common sense. The erratic, crotchety judge is a very real evil when he exists; but as an evil he is not to be mentioned in the same breath with the permanently, politically or economically biased judge. From one there may be escape; from the other there is no escape whatever. I trust, and feel the utmost confidence, that this Convention, in voting on this question, will continue to show the same sturdy common sense it has shown hitherto when faced with the proposition of making an inroad on our ancient liberties as protected by the judge insulated from the current of the political passions of his time. We have had it proposed before to remove the insulation entirely; it is now proposed merely to crack it. I trust the Convention will not even crack the insulation.

Mr. WHIPPLE of Brookline: We are facing a somewhat exceptional situation, and one which is of great importance. Nothing can be worse for the Commonwealth than a want of confidence in its administration of justice, and a want of confidence exists and has been voiced. It is necessary for us, if we can, to ascertain and to remove the cause. It is very difficult to do this. Perhaps it is impossible to analyze correctly all the contributing causes, but one cause, as it has seemed to me, is this, growing out of our system of appointment of judges to hold their office during life or good behavior. That results in what I may call a residuum of judicial incumbents. It cannot be disputed that the large mass, the larger number of our judges, are men of the highest character, honesty, integrity, and of honest purpose. I do not think too much can be said of the character of the judges who have occupied judicial positions in our Commonwealth. Once appointed, the sense of responsibility seems to change them, so that men who in practice have not shown judicial qualities or even shown the highest qualities of character, when once charged with that responsibility have discharged the office of judge with high credit to themselves and to the Commonwealth. But this has happened: Men accustomed to the use of uncurbed power and temperamentally unfitted for the judicial office soon get these mannerisms, — sometimes something worse than mannerisms, and display temperamental unfitness. Under our system there is no way of getting rid of this residuum. They are not bad enough in their conduct so that they could be impeached; it would be heartless and cruel to do it, or to make charges which could be the basis of impeachment.

This measure, it seems to me, is the best solution under our present system of selection whereby men who have proved themselves to be incapacitated, or temperamentally unfit, may be swiftly and speedily removed. I think, however, that we may well consider whether an amendment which has been suggested by the gentleman from Boston (Mr. O'Connell) ought not to be included, because it is not always from the judges who are of advanced age or mental or physical incapacity, it is not from those men that we have the great difficulty; it is from men who are temperamentally unfit, whose manners are intolerable, — and we know them. We do not speak their names, we know them. Conscientious men, just men, with high ideals, but temperamentally presenting characteristics which make them intolerable, they bring into disrepute the whole bench, they shake confidence in the administration of justice.

Mr. McANARNEY of Quincy: The gentleman from Brookline in the fourth division (Mr. Whipple) says that there is to-day in this Commonwealth a want of confidence in our courts. I deny the correctness of that statement. In my opinion there is not to-day a lack of confidence in our courts. It is true, however, there has been from time to time dissatisfaction expressed with reference to some of the decisions of our courts, such dissatisfaction being addressed against the law which the judge declares, and not the judge. There is a vast difference between a feeling based upon dissatisfaction with the law which the court, in the performance of its duty, is compelled to declare, and a want of confidence in the courts. It has been urged that the adoption of a limited tenure would improve our judiciary. Let me state that when this matter was before the Judiciary Committee gentlemen who now are urging this resolution, with but one exception, came before the committee, and in every instance the cases to which they directed our attention were those of judges of the lower courts. They spoke of judges who, after serving a long period of years, became arbitrary. It was stated such judges could not be removed, because nobody wanted to have them impeached or removed by address, and therefore there was no remedy. These views led to the resolution which has been brought before this Convention by my able colleague from Quincy in the second division (Mr. Blackmur). If his resolution is adopted, we shall have an easy method of removing judges who have become incapacitated by reason of advanced age or physical or mental impairment. I think it is a mistake to forget that the lower courts are important factors in the well-being of every community in which they are located. Judges of the lower courts are the judges having to do with the shaping of the policy of those communities with reference to the maintenance of law and order. They are the judges who have to do with the wayward youth of the community. They are the judges who from the ripeness of their experience and years upon the bench know best how to deal with these young offenders so as to make of them useful citizens, and the words that they utter upon the bench are likely to be remembered and every year adds value to the service which they are rendering the Commonwealth. If I had my say and I were confronted with the proposition of limiting the tenure of office of Superior Court judges or that of lower court judges, I would prefer the unlimited terms for the lower courts and the limited one for the

Superior Court, because I believe that the lower court judges, who are connected intimately with the life of the community, are judges who ought to be on the bench so long as they are physically and mentally capable of performing their duties, and they should be protected in the fearless discharge of the functions of their office.

Mr. WHIPPLE: May I ask the gentleman whether he would object to the insertion of the word "unfitness" in the measure suggested by the gentleman from Quincy in the second division (Mr. Blackmur) so as to make it possible that judges who temperamentally were unfitted should be removed from office upon application to the Governor and Executive Council?

Mr. MCANARNEY: That can be offered at the next stage. It requires careful thought. What do you mean by unfitness? Do you mean if a lawyer becomes dissatisfied with a judge's decision, or the exercise of his discretion in a given case, that notwithstanding the Supreme Judicial Court on exceptions may sustain the judge's ruling, he may be charged with unfitness and forced to defend himself before the Governor and Council?

Were we to put the word "unfitness" into this amendment without any words defining it or limiting it, we would be acting unwisely.

Mr. LEONARD of Boston: The gentleman from Springfield in the third division (Mr. Kilbon) in speaking of the amendment offered by the gentleman from Boston (Mr. Mancovitz) in the first division, spoke about a judge's appointment for a definite term having influence on men taking position on the bench. I just want to quote two very brief extracts regarding the State of New Jersey, where the appointive term is seven years. There the Chancellor is appointed for seven years, and the assistant chancellors are appointed also for terms of seven years. The first quotation is from the document prepared by the commission that compiles information for the Convention:

> Chancellors are appointed by the Governor with the approval of the Senate for a term of seven years. The court now consists of a Chancellor and seven Vice Chancellors, who sit separately in different parts of the State. The Vice Chancellors are appointed for seven-year terms. That bench is regarded generally as the strongest in the State, and has given entire satisfaction to the bar and public.

My next quotation is from the address of Governor Fort of New Jersey delivered in Boston some three years ago:

> Take the Supreme Court of the State of New Jersey, if you will. For thirty years the Democratic party had power in New Jersey consecutively. During that time no Democratic Governor ever appointed a Democrat to succeed a Republican on the Supreme bench. For the next fifteen years the Republican party of New Jersey had the power, until the coming of President Wilson, who succeeded me as Governor. During that fifteen years no Republican Governor ever put a Republican in place of a Democrat upon the Supreme bench. And I want to say another thing to you. It may not be so in New York, but I was Governor of New Jersey for an entire term and I appointed seven of the nine Supreme Court judges, and I can say to-night that no man in New Jersey, Democrat or Republican, ever asked me to make an appointment to the Supreme Court. That is the history of our Supreme Court.

And I wish to say, gentlemen, that the amendment offered by the gentleman from Boston (Mr. Mancovitz) simply asks for appointment for a seven-year term for our lower court judges. I think we have this evidence of the success of the practice in another Commonwealth, and we are entirely justified in adopting an amendment of

that sort. I think we need have no fear as to the character of the appointments or the reappointments that may be made. I trust the amendment offered by the gentleman will prevail.

The amendment moved by Mr. Mancovitz of Boston was rejected, by a vote of 42 to 99.

The amendment moved by Mr. Williams of Brookline was adopted.

The first amendment moved by Mr. O'Connell of Boston, — inserting after the word "age," in line 4, the word "unfitness," — was rejected, by a call of the yeas and nays, by a vote of 94 to 96.

The second amendment moved by Mr. O'Connell of Boston, — striking out lines 3 to 6, inclusive, and inserting in place thereof the following: "All judicial officers shall be nominated and appointed by the Governor, by and with the consent of the Council, for a term of ten years; and they may be reappointed at the expiration of such term," — was rejected, by a vote of 38 to 104.

The amendment moved by Mr. George of Haverhill to the new draft moved by Mr. Blackmur of Quincy was adopted, by a vote of 71 to 58.

The new draft moved as a substitute by Mr. Blackmur of Quincy, as thus amended (see No. 405), was then adopted by the Convention; and it was ordered to a third reading Thursday, July 25.

It was read a third time Tuesday, August 6, as changed by the committee on Form and Phraseology, as follows (No. 413):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined article of amendment:—

ARTICLE OF AMENDMENT.

Article I of Chapter III of Part II of the Constitution is hereby amended by the addition of the following words:— and provided also that the Governor, with the consent of the Council, may after due notice and hearing retire them because of advanced age or mental or physical disability. Such retirement shall be subject to any provisions made by law as to pensions or allowances payable to such officers upon their voluntary retirement.

Mr. MAGUIRE of Boston: I move both amendments offered under my name in the calendar.

The amendments were as follows:

To amend the resolution by adding at the end thereof the following:

And provided further that the Governor by and with the consent of the Council may remove any judge for incompetence in the discharge of his official duties after giving him an opportunity of being heard and of being represented by counsel in his own defence.

Also by adding at the end of the resolution the following:

The judges of the Supreme Court and the Superior Court, and the probate courts, and the land courts, and the district courts, and the police courts shall be elected by the people for a term of seven years. The names of the candidates for the judges of the aforesaid courts shall be placed upon the ballot at the regular State elections in alphabetical order without party or other designations except the title of the office. The General Court shall determine the qualifications of said candidates as to age, experience and length of membership at the bar.

Mr. MAGUIRE: In offering the amendment which provides for the removal of a judge for incompetence in the discharge of his official duties the object I have in mind is the improvement of the judiciary.

Most classes of people are checked up in some way. For instance, if the clergy fail to satisfy their congregations they are removed. If physicians are incompetent they cease to have patients. If lawyers are inefficient they no longer have clients. But if the members of the judiciary are incompetent, there is no relief for the people; their commissions are for life, there is no way of removing them.

At the last stage the word "unfit" was objected to because it was too broad. "Incompetence", it seems to me, applies more particularly to the judge in the performance of his official duties. In other words, it is well known what incompetence may mean. An incompetent teacher means one who fails to perform his duties in a satisfactory manner.

When this matter was up for discussion before, my good friend from Quincy in this division (Mr. McAnarney) spoke about the several hearings on this subject before the committee on the Judiciary. He referred to the fact that several members of the Convention who spoke in favor of an elective judiciary referred to some judges almost by name as being incompetent or unfit. He said they did not really criticize the appointive system. The answer to him is that a system that produces bad judges or poor judges or incompetent judges or judges who are complained of in the very vigorous manner that the delegates to the Convention complained of them, seems to me to be subject to a very vital objection. It endangers the administration of justice.

The amendment really needs little argument to support it. The Convention hardly will be willing to say that an incompetent judge should be allowed to remain on the bench. At any rate I believe we all are opposed to mental incompetency. There are many empty vessels on the bench, and it is impossible to reach them, it is impossible to remove them, unless we have some constitutional provision like the amendment which I have offered.

Now for the amendment providing for the election of the judiciary on a non-partizan basis. There was a rather singular thing in connection with our hearings of the Judiciary Committee, and that was the presence of the attorney for the Boston Elevated Railway Company. It seems to me that his presence there was a matter that should have brought objection from my friend from Quincy. Yet on the whole the presence of that corporation lawyer was not out of place, perhaps, because since the last Constitutional Convention, in 1853, the growth of public service corporations, and their interference with legislative matters, in fact all matters pertaining to government, have been so great a scandal as to be a cause of widespread complaint by friends of good government.

This attorney, when questioned by me, admitted that members of his law firm and the officials of his corporation indorsed individuals for appointment on the bench. He could not trust the people to elect judges, but his fee was paid by them. Of course such a little incongruity like that never disturbs a corporation attorney. As I said last summer I do not think he had any influence with the committee, but he was there. His shadow was across our table from the beginning of our hearings until the end.

I never see an attorney representing a public service corporation that I do not feel like telling him to be careful, that life is not so long, that sooner or later when his work is done forever and he is

sleeping on the hill, it will be reviewed by some philosopher or poet. How sad if his career is summed up like the lawyer of Spoon River thus:

I was the attorney for the "Q"
And the Indemnity Company which insured
The owners of the mine.
I pulled the wires with judge and jury
And the upper courts, to beat the claims
Of the crippled, the widow and orphan,
And made a fortune thereat.
The bar association sang my praises
In a high-flown resolution.
And the floral tributes were many —
But the rats devoured my heart
And a snake made a nest in my skull!

Since those hearings the Boston Elevated Railway Company has been on its knees asking the people to help it by taking charge of the road, and by paying a 7 cent fare. The Bay State Street Railway is in the hands of a receiver, and its fares have been raised to help meet the difficulties of mismanagement or worse. The old stories of the New York, New Haven and Hartford Railroad, the Boston and Maine Railroad, and the Boston and Albany Railroad provoke indignation that such misdoings as they have been guilty of could happen in a free Commonwealth. The tale of the gas and electric light companies is the same: Legislative lobbying; abuse of their franchises; extortion from their consumers. These corporations do not trust the people to elect judges, but when they are in distress through their own willfulness it is to the people they go for help, asking that the past be forgotten and a new start made. They trust the people only to pay the bills.

This unfortunate condition of affairs has grown up since the Convention of 1853. Previous to that time we were in the main an agricultural community. Since then has come the great industrial growth and formation of the public service corporations. The latter have caused most of the troubles of the last two generations. They have debauched the Legislatures. They have been at the root of all the evils in government. They generally have worked through the party in power, but they also have had so much influence with the party of opposition that they have been well-nigh immune from effective criticism. Big business has been so generally indifferent to the claims of its employees and the communities where its mills turned out large and unfair profits that only the other day a great churchman, remembering the bitter days of his youth in Lowell, felt obliged to refer to the shame of it all in words that burned:

He takes our life for wages,
He holds our land for rent,
He sweats our little children
To swell his cent per cent;
With secret grip and levy
On every crumb we eat,
He drives our sons to thieving,
Our daughters to the street.

Yes, it is a never ending fight against privilege.

Safety from wrong lies in the honest, fair administration of justice. This is best secured by a non-partizan elective judiciary. A judge elected by the people in such a manner certainly has a higher com-

mission than one who receives his appointment from a Governor after importunity and indorsement by politicians and special interests. Another value of the system is that it would place the legal profession on a high plane. It would put the honorable responsibility on its members of being especially active and vigilant in securing the election of competent judges. The law schools would be stimulated to turn out men of the highest mental equipment. Oh, how much better such a system would be than the present method of appointment which gives first consideration to political and business expediency. The change will be hard to effect. But —

> Against the grim defences
> Where might and murrain hide,
> Unswerving to the issue
> Loose-reined and rough we ride
> Full tardily, to rescue
> Our heritage from wrong,
> And stablish it on manhood,
> A thousand times more strong.

Mr. CHURCHILL of Amherst: We have offered here two amendments which in substance repeat the proposals which have been offered to this Convention before and defeated. One of them goes to the point of the removal of unfit or incompetent judges through charges made by individuals to the Governor and Council. The other goes to the question of an elective judiciary. Both of these proposals manifestly will diminish the independence of our judiciary. As I followed the vote on the question as to whether the word "unfitness" should remain in the amendment, it was quite evident to me that many members of this Convention responded instinctively to the thought: "Certainly. Why not? Why not get rid of unfit judges?" And the suggestion has been made in practically the same terms by the gentleman who has just spoken (Mr. Maguire): "Why should we not wish to get rid of incompetent judges?"

I wish to say a few words in general with regard to the necessity for the independence of the judiciary, and a few words in particular to point out what the proposal to handle the incompetency of judges by attack before the Governor's Council means. For the real fault and trouble with this proposal to remove unfit judges lies precisely in the consequences of removal for unfitness by an attack of individuals before a body which, however able, is a political body composed of a few men.

The reasons why the independence of the judiciary should be preserved, even if at the expense of having occasionally a judge who is not up to the mark to which we should desire him to come, lies both in the situation and in the character of the judge's work. A judge in the higher courts must give up entirely his practice. A judge in the lower courts, the district, police, and other courts, must largely give up his practice. In other words, he is in the higher courts always, and in the lower courts practically, confined to an exercise of the lawyer's power, to put it in that broad way, which is a profession in itself. He has ceased to be an advocate, he has become a judge; and as he makes himself more efficient as a judge he limits to a large degree his power of returning to successful practice.

Most legislative offices, most political offices, are pleasant and often

beneficial incidents in a business or professional career; but in the case of a judge he has given himself for life to a single profession, which shuts out practically everything else. Other officers are expected to respond quickly to the public will, to carry out popular policies; a judge can have no popular policies, he can have no policy at all, and justice under the law often means running contrary to popular policies and popular feeling. Other public officers may gain popularity by championing the cause of a community, a class; a judge, on the contrary, cannot. His work attracts no public attention, is not known by the public until he is attacked. On the other hand, some one is dissatisfied with him in nearly every case. No other public officer has so many opportunities to make enemies or so few opportunities to make friends.

We need judges of strength and firmness, not only to keep the proceedings in the court-room within the lines of reason and justice, but also with regard to the effect of their doings on the community, especially in criminal cases. A judge has to see justice done in unpopular cases; and some of the chief occasions for popular discontent with our judiciary and attack upon our judiciary have been precisely cases where the judges maintained justice in the face of popular attack. You remember perhaps that most famous case in our judicial history, the Boston Massacre case of 1770. You remember the case of the enforcement of the fugitive slave law in this State. That enforcement was argued openly in the Convention of 1853 as a reason for an elective judiciary. The judges had run contrary to the public will, the public desire, but they had maintained justice and the law. That was the occasion for the attack on Chief Justice Shaw, and that was, I understand, really ultimately the reason for the removal by address of Judge Loring of the Suffolk Probate Court. We have that famous case of the murder of Dr. Parkman by Professor Webster, when Lemuel Shaw, the Chief Justice, was attacked bitterly for the charge he gave to the jury. And we have the more recent case, which still must be vivid in the minds of us all, the Tucker murder case in 1904, prosecuted by ex-Attorney-General Parker. In that case the judges, Justices Sherman and Sheldon, were attacked most bitterly and violently by the yellow press of this State and people who were induced to follow it. Those judges, all of them, had to stand up independently in the face of popular pressure.

To-day a dissatisfied litigant, as somebody has put it, goes behind the court-house and swears at the judge and the jury, and then eventually forgets, at least accepts like a sensible man. But with an easy method of removal, every disappointed lawyer with political affiliations, every vindictive woman litigant with an appealing story, every unfriendly newspaper with its power to distort the truth and to convert ordinary incidents into sob stories of oppression, would keep a judge under fire with threats, executed or unexecuted, of removal; so that no strong man would wish to take or retain a seat on the bench, and only the complaisant and politically tactful could survive. For every one of these cases that I have suggested one can furnish notable examples in actual fact.

I listened the other day to a complaint about the manners of some of our judges. The gentleman who made that complaint (Mr. Whipple) admitted that these judges were honest and that they were

able, that they were just, but he said their manners were intolerable. There are things that are far more important in our courts than manners, important though they may be, — justice, fairness, wisdom. Chief Justice Shaw, who was referred to in the last year's session of this Convention as "the old tyrannical judge of Massachusetts," was not gracious in court, to be sure; yet he was the first judge in Massachusetts to declare, contrary to popular and current legal opinion and to the ruling of the court below, that a strike for the purpose of maintaining a closed shop was not an indictable conspiracy, and at his retirement in 1860, after thirty years' service as Chief Justice, the Roman Catholic Bishop of Boston wrote to him expressing the confidence which he had felt in the Chief Justice all through the "Know Nothing" days and adding: "I have shared in the general regret that the Commonwealth and its citizens are no longer under the protection of the triple shield of your profound jurisprudence, your calm wisdom and your incorruptible justice." (Chase, "Life of Chief Justice Shaw," 217.)

Who is it who complains of the manner of our judges? It is not the labor movement. One of the gentlemen who sit in the second division (Mr. Dennis D. Driscoll), who represents the labor-unions, said last year that the difference between labor and the judiciary is that of the question of injunctions; and the gentleman from New Bedford in the same division (Mr. Harriman) this year has told us that labor has no complaint of the judiciary except in the few cases in which economic questions are raised; and the present amendment, honestly construed, would give labor no advantage and no pressure on the courts in such cases, — I mean the amendments offered by the gentleman from Boston (Mr. Maguire). Do we hear the jurors complaining of the manner of the judges or a litigant or a witness? The witnesses often are grateful to the judge for protecting them from some lawyer. And even in the wilds of the western part of this State, rumors have come to us on occasion that some of the most forceful and able lawyers in this State, who raise complaints about the intolerable manners of the judges, are themselves not always scrupulous nor gracious in their handling of witnesses before judges whose manners, though "intolerable," have defended the witnesses from unconscionable aggression. Only the lawyers complain, and only a few of them. The manners of both bench and bar have improved in the last fifty years, but who will say that the bench has not kept pace in that improvement with the bar? Some lawyers would like to dominate the court-room, to use their dramatic powers and their skill in repartee and persuasion without the guidance and restraint of judicial wisdom, reducing the judge to less than a moderator, and he has been reduced in numerous States, — I will not take time to go into details, — to a position less almost than that of a moderator.

I want to address myself for a moment to remarks which have been made heretofore with regard especially to our district and police courts. It seems to be the opinion of some members that while we should preserve the independence of our Supreme Judicial Court and our Superior Court, in the case of the district and police and municipal courts we wisely may elect the judges for a term, or make them removable for unfitness or incompetency by a political board. I do not maintain for a minute the proposition that our lower courts are per-

fect or that improvement and reform are impossible or unnecessary. No one recognizes the shortcomings of our lower court system better than many of the justices of those courts themselves. But a frequent change of personnel will not correct those faults; it will make them worse.

There are three principal reasons, as I see them, and that seems to be the opinion of men familiar with the lower courts, why such courts have not developed to their full possibilities. One is the low range of their salaries. I am not going to argue that point, but I should like to put myself on record here as a member, for the present at least, of the Legislature of Massachusetts, as saying that we need to make the salaries of our district court judges sufficient to get men of very high caliber and very great knowledge of human nature. I regard their position as in some respects more important than the position of any other judges in the Commonwealth of Massachusetts.

In the second place, we have a situation in regard to the judgment of civil cases before these courts that inevitably reacts upon their dignity and power and standing. I refer to the absolute right of appeal in these cases, the right to appeal the whole case to a higher court, not merely for the correction of errors, but for a complete new trial. Appeals are claimed in thirty to forty-five per cent, I understand, of all the cases tried, no matter who the judge is, and in practically all cases of any consequence. That system robs the court as well as the lawyers of the stimulus of responsibility, and brings the judicial power into disrepute. Able men do not find mock trials attractive.

The third of these most important things that act to hamper the proper effectiveness of our lower courts is the isolation of these courts from each other, — seventy-four courts, all of them absolutely apart from each other, with the exception of the municipal courts of Boston. We need, as has been suggested, I think, by my friend from Cambridge who sits before me in this division (Mr. Aylward), a coördination of these courts, a uniformity in their procedure. We need perhaps a Chief Justice or some other centralizing authority under whom that may be accomplished.

All those difficulties can be cured by legislation; they cannot be cured by merely changing the personnel. Assurance of and protection for judicial independence are needed even more in the lower courts than in the Superior Court. The position of a judge of a lower court is none too attractive for a good lawyer as it is. It must not be made less so but more so. Lower courts are stationary. They deal constantly with the same lawyers, and the same parties often, who find on the bench constantly the author of the decisions which offend them. Many people in every community, as you and I well know, have no understanding of judicial impartiality and no love for it. With an easy method of removal, local politicians, local newspapers, local organizations and the parties to local disturbances would try to control the bench. The position would become so uncomfortable that no really able and self-respecting man could wish to take it. In the lower courts the wonder is, to my mind, not that they have not been invariably excellent, but that so many courts, working under the degenerating system that has come down to them

from justices of the peace, have given so high an example of that judicial conduct of which ex-President Taft spoke when he said:

> Justice in the minor courts, the only courts that millions of our people know, administered without favoritism by men conspicuous for wisdom and probity, is the assurance of respect for our institutions.

When we look upon the number of inhabitants of Massachusetts who year by year up to the time of the present war have come thronging in here, to whom we have opened the gates of opportunity, whom we have asked to become of ourselves, citizens and brethren, when we realize that their knowledge of the justice, the ideals of America, often to a large degree is obtained from the handling of these minor cases, so called, these domestic cases, these cases that spring up throughout the whole body of our people, when we realize all that, I think we may agree that instead of regarding the minor courts as courts whose independence may well be attacked, we should take exactly the opposite view and maintain that these courts should be built up to the highest possible efficiency and integrity. And to do that we must maintain absolutely the independence of the judges.

You have seen, gentlemen, in years past attempts to remove various officials of this State by means of the action of the Governor and Council. You may look back to the action of the Council *pro* and *con* on various proposals for appointment and removal. I will not name any of them, but anybody who has been familiar with our history will recall some of them. I ask you, do you want, because there may be a few judges who might be bettered, to submit the whole body of our inferior judiciary, if I may use the word in a purely technical sense, — for they will be the ones to be attacked and threatened, — do you want in the interest of justice, in the interest of the Commonwealth, to submit these men to the liability of frequent attack before this political body of the Council? I am not attacking the Council in the least. I know that they do their duty with as much honesty and devotion to high purpose as any body of our officials. But this certainly is true, that if you make it possible to bring up a judge under the charge of incompetence or unfitness made by individuals before that body, you not only are opening the doors to a tremendous evil in unjustified attack, attack for selfish or revengeful purposes, but you also are making it practically impossible for a self-respecting man, the man whom we want, to be judge in our minor courts.

I appeal to this Convention to think for a moment of the value of these courts, and not even in the case of the lower courts, in order to get rid of a few possibly unfit judges, to submit the whole judiciary to such an attack. I appeal to the Convention to keep our judiciary independent, even if it means keeping upon the bench some judges who might fairly be called unfit. For that evil will be far less harmful than the evils which certainly will result from the procedure which would be established by the amendment now before us.

Mr. O'Connell of Boston: I did not want to interrupt the gentleman, but I should like to ask him before he finally takes his seat what argument he possibly can urge that would keep any unfit judge on the bench; and if this provision gave us the hope of relieving the bench of a single unfit judge, in all logic should we not address ourselves

to the accomplishment of that fact, inasmuch as he concedes that there are incompetent judges on the bench.

Mr. CHURCHILL: If I may have a moment in which to answer the gentleman, I will say this: If the gentleman or his friends will offer a proposal which will commend itself to this Convention as a necessary, rational and effective means of removing only the unfit and incompetent judges, without subjecting the men who should not be subjected to attack to the likelihood or the possibility of an attack, I shall be glad to vote for that amendment. The illogicality of the gentleman's proposal is that, basing it upon a premise which I will accept, that there are among all our number of judges some few unfit judges, — I am not competent to decide that question, but I accept it, — the illogicality of his position is that in order to get rid of those incompetent judges he is perfectly willing to submit the whole system to disaster. It is the logicality of getting rid of a sore on your thumb by cutting off the whole hand.

Mr. O'CONNELL: May I ask the gentleman, inasmuch as he concedes that there are these incompetent men, —

Mr. CHURCHILL: I concede it for the sake of the argument.

Mr. O'CONNELL: For the sake of the argument, and I understood you in your argument before to say that there were some, and inasmuch as it is conceded that it is well to remove unfit and incompetent judges because of their unfitness and incompetence, what would you suggest that would protect our effort from the evil that you fear? If there is any protection that can be thrown around the proposal, certainly we are only too willing to accept it. It is not for the purpose of casting the courts into politics, but for the purpose of elevating our judiciary and curing an almost universally recognized defect in our present system that the amendment is suggested. If there is any suggestion coming from the gentleman that will relieve it from the odium that he wishes to cast upon it, I for one, as a proposer, will be only too glad to join with him.

Mr. CHURCHILL: If the gentleman is asking me a question, the suggestion which the gentleman makes is very like that which has been made not infrequently in this Convention: "Why don't you offer something constructive?" That is a very good invitation, and we all of us would like to be constructors. But when in the course of argument there is plainly pointed out the fact that all the possible proposals, at least that have appeared, are manifestly worse than the thing they attempt to cure, and the proposers of those ask their critics to suggest something that will be free from these errors, I submit that the conclusion which the gentleman desires from his question is not a conclusion that any rational man may give. I wish that I were able to offer precisely that. It is precisely because I do not see, and no one in this Convention with far more knowledge of these matters than I have has been able to offer, an amendment which will do the thing I said, get rid of these few possibly incompetent judges without submitting the whole system to that attack, — it is precisely because of that and precisely because the proposals which in lack of that are offered are proposals which will make the situation far worse than the situation which you wish to cure, that I criticize your proposals and hope that this Convention will vote them down. But if somebody with more ability than I have, and more ability than

I can see at the present minute to hit that point, will offer such an amendment I shall be glad to support it.

We must do the best we can under the circumstances. That is the case always. The proposal before us it seems to me is: Shall we in order to get rid of a few who cannot otherwise be gotten rid of subject the whole judicial system to this kind of attack? We have to take our choice. Neither is perfect. Which shall we choose?

Mr. RICHARDSON of Newton: We have listened now to one address on each side of this question, on which the Convention has expressed itself already in no uncertain terms more than once since our first day's deliberation. I think the Convention is ready to assert itself again in no uncertain terms, and therefore I move the previous question.

Mr. HART of Cambridge: The gentleman who has just sat down (Mr. Churchill) has challenged this House to produce a method by which it is possible to winnow out the judges of a system of courts, so to speak. He has indicated that it is impossible to remove a few unfit judges without impairing the independence of all the other judges. If that be the case, what are we to say to the framers of the Federal Constitution and to the authorities of the government of the United States, who for more than a century have had in effect a method for doing precisely what the gentleman says ought not to be done, namely, the removal of judges of the United States by impeachment, readily applied, applied within a few years to an inferior judge of the United States who was so unfit that the machinery provided for that purpose was applied to him, to the great benefit of the United States and doubtless to the strengthening of the hearts of the faithful judges.

Mr. CHURCHILL: I should like to say that the gentleman who has just spoken has absolutely misunderstood, doubtless through my own fault, my attitude. I have had absolutely nothing to say with regard to the effect of impeachment or removal by address. I have addressed myself simply to this proposal of removal by attack and charge before such a body as the Council. I entirely agree with the gentleman that a man who manifestly is incompetent and unfit to a point of impeachment ought to be, could be, and has been removed.

Mr. CREAMER of Lynn: I should like to ask the delegate from Amherst (Mr. Churchill) why, if the system which he extols is a good system, it should fear attack before the Governor and Council.

Mr. CHURCHILL: Being a school-master I am always supposed to answer questions; I do not always understand them. I ask the gentleman if he will repeat his question.

Mr. CREAMER: I should like to ask the delegate from Amherst (Mr. Churchill) if the present judicial system which he extols so highly is so good, as he says it is, why it should fear attack, — what he deems attack, what he calls attack, — by proceedings before the Governor and Council. I should like to know if he thinks the Governor and Council of Massachusetts could possibly be such an unfit body to determine whether judges were incompetent or not.

Mr. CHURCHILL: I can only say in answer to that question that during the course of this Convention for two years both in public and private I have endeavored to make plain certain ideas of my own to my colleague who usually sits on my right (Mr. Creamer). In

so many cases I have found after addressing to him the most logical, the clearest, the most convincing remarks, that he has remained absolutely impervious, that my answer to his question will have to be this: That if I have not convinced him already by the remarks that I have just made I certainly cannot do so by any further remarks.

Mr. O'CONNELL. I am very sorry indeed that the gentleman from Newton (Mr. Richardson) saw fit to move the previous question. I want to call the Convention's attention to this fact: That on three different occasions this subject has come up and on each occasion the previous question has been invoked with the deliberate purpose of preventing a discussion that would illuminate and bring forth the weakness of our present judicial system. Adequate discussion of this most elementary of all propositions that affect the public has not been allowed, which is not fair to the people who sent us here. We have not been permitted the opportunity to debate this subject as we should. Take, for instance, to-day. I want to offer an amendment to this measure. I waited for five days to find out what the committee on Form and Phraseology would return to us, and it was printed only to-day, and placed in the document book, although dated as of yesterday. Only to-day could I find out how I should word my amendment. And now, when only two men have spoken, one on each side, a man secures recognition from the chair and urges the P. Q., when over twenty members arose seeking a chance to speak. If the previous question is carried, it will prevent me from offering an amendment that ought to be offered to this resolution. Is this reasonable, gentlemen? Is it fair to a subject that affects the people and that is near to them? I urge you at the present moment not to adopt the previous question.

Unanimous consent having been given, Mr. Joseph F. O'Connell of Boston moved that the resolution (No. 413) be amended by inserting after the word "age," in line 8, the word "unfitness."

Mr. O'CONNELL: I want to thank the gentleman from East Boston (Judge Murley) for the courtesy that he has secured to me from the Convention, although this does not relieve the majority that has been whipped together to-day from the charge of refusing fair discussion of the proposal. I want to say to him also that I admire his course as the only judge in this Convention who a week ago voted to exclude unfit judges from the bench. I like that kind of manhood, and I like that kind of character. There are thirty-odd judges here, and I am surprised that many of them did not follow his example in doing the same thing. [Applause.]

Mr. GEORGE of Haverhill: I want to call the attention of members of this Convention to what we voted for the other day, and I am going to call your attention to what the committee on Form and Phraseology has served us in this belated document No. 413.

Article 1 of Chapter 3 of Part II of the Constitution is hereby amended by the addition of the following words: "and provided also that the Governor, with the consent of the Council, may after due notice and hearing retire them because of advanced age or mental or physical disability, upon the terms and conditions that may be provided by law for the voluntary retirement of judicial officers."

The committee recommend to omit all after the word "disability," in line 9, and insert in lieu thereof the following sentence: "Such

retirement shall be subject to any provisions made by law as to pensions or allowances payable to such officers upon their voluntary retirement". In effect they have recommended the striking out of the amendment that we adopted the other day, cutting out the words "pensions and annuities." I submit that in view of the action of the Convention the other day this looks like a species of sharp practice.

This recommendation of the committee on Form and Phraseology ought not to be accepted. We ought to insist on the amendment that we adopted the other day, which does not put into the Constitution objectionable phrases and leaves our courts in the same relative position as other departments of the Commonwealth.

Mr. WILLIAM H. SULLIVAN of Boston: It is delightful to listen to the carefully prepared address of the gentleman from Amherst (Mr. Churchill), and no one who loves oratory or good delivery could sit unmoved and uninfluenced by that oration. One must ask himself, however, what opportunity the orator had for learning the facts about which he speaks, and so I am quite anxious to learn if the gentleman ever has tried a case, or ever has appeared before a judge, or knows at first hand what kind of a system of administration of the law we have in Massachusetts. His evident lack of familiarity with the address leads me to believe that he did not write it. He referred from time to time to the manuscript which consisted of a combination culled from the most eloquent utterances conceived by the friends of the judges. If the delegates looked through the verbiage at the substance of that address there would be no doubt but that this Convention would stand by its earlier action; however, my namesake from Salem (Mr. E. G. Sullivan) has been very busy prancing around and getting everybody here who is a friend of the judges, so the combination, fulsome oratory and the practical work, may induce some who were not convinced thoroughly of the merit of this measure to change their viewpoints and their votes.

We have had this matter discussed here several times, and in no uncertain way this Convention has voted to submit a resolution to the people whereby the Governor and Council may remove judges who mentally or physically are incapacitated. Look at the records of your House of Representatives, and you will find repeatedly where judges have been appointed for special terms because the presiding judge in the district was unable to officiate. My learned friend the professor from Amherst (Mr. Churchill) says he believes that such questions should not be submitted to the politicians in the Governor's Council, and then he says: "I don't mean any reflection on the Governor's Council, but keep the sacred judges from the reach of politicians in the Governor's Council." He prefers to have an address to the Legislature, where there are no politicians, — this glorious body who he believes ought to be elected only every two years, and who he believes ought to sit only every two years. He says: "It is true, notwithstanding all this friendly comment and oratory which I have borrowed from the friends of the judges, that there are some unfit judges, who ought to be removed, but let us not submit a resolution which would make it possible to remove a bad judge if thereby the position of a good judge might be endangered." In Massachusetts we have our Governor and the Governor's Council,

pretty fair men, pretty good representatives of the people, if they are mostly Republicans. My friend from Amherst (Mr. Churchill), who is a member of that dominant party, is fearful that some upright and honest judge might be haled before the Governor's Council and subjected to the indignity of removal and be separated brutally from the pension and the pay-roll, and he says: "Oh, keep the judges from the reach of the politicians, and let an address be sent to the Legislature, where there are no politicians and where the judges are safe."

I say we have passed upon that resolution in no uncertain manner. We have seen no objection to submitting to the Governor and Council the question whether the judge is mentally infirm or physically unable to perform his duties, and if he has reached an advanced age, where he ought to retire. I say there is no reason, notwithstanding this oratorical effort of the professor from Amherst (Mr. Churchill), with no substance (I mean the speech, not the professor), something like the initiative and referendum speech, where he said, after talking pleasantly for an hour: "I am attempting no argument."

Mr. O'CONNELL of Boston: I regret very much that under the rule it will be impossible to adequately discuss this subject with but ten minutes left for debate. The amendment which I have introduced simply permits the Governor and Council to remove a judge because of unfitness. To me it is a very proper and becoming reason. When we reflect how often mistakes of judgment as to the character and fitness of men are made by all of us, whenever we are called to pass judgment on making appointments to any form of occupation or activity, we realize how often mistakes are made. None of us is infallible in judgment and surely the Governor and Council may make as many mistakes in appointing and confirming a man who they think may make a fit judge as any other organization and they should not be denied the opportunity of correcting their errors when it is patent to them that a grave mistake has been made and the State is made to suffer thereby. Some gentlemen seem to be apprehensive as to the meaning of the word "unfitness" and whether or not it is the best term to use. Personally, I have no pride in position on this matter and would be glad to adopt any other word that would satisfy them if it covered the principle involved. We all know that the first consideration for the appointment of a judge is his fitness, so called, to fill the office, and it would seem as though the same standard that establishes and determines fitness should be able equally to decide as to unfitness. In becoming unfit a judge certainly fails in the first principle and essential that justified his original appointment. What is unfitness? I quote from the Century Dictionary. "Unfitness" means the character of being unfit in any sense. "Unfit" is defined as follows:

(*a*) Improper, unsuitable, unbecoming, inappropriate. (*b*) Not suited or adapted; not fitted. (*c*) Wanting suitable qualifications, physical or moral; not competent; unable; said of persons.

Its synonyms are found to be, unqualified, unmeet, unworthy, incompetent, insufficient. To me the word "unfitness" seems the proper word for us to use in view of this generally recognized authority as to the definition of the word. It is comprehensive enough to be understood easily by the people who would pass on the question of

its adoption and yet it is limited enough to confine the Governor and Council so that they could not attempt to displace a man who simply would displease them or some particular party for some fancied grievance or disagreement. Is there a man in this Convention who will dare rise and say that he does not want an unsuitable judge removed? Is there a member here this afternoon who will dare rise from his seat and say that he believes in a doctrine that will continue an unfit judge sitting on a bench in Massachusetts? Are we here in the year 1918 willing to proclaim to the world that we concede that we have incompetent judges in Massachusetts but we do not dare suggest a change because forsooth somebody suggests that politics may arise in it and that the law possibly may be abused? Shame on the men of 1918 if we cannot address ourselves to a subject of this kind and show ourselves to be masters of it so that we may be able to cure or suggest a cure of an evil that is conceded to exist!

The gentleman from Amherst (Mr. Churchill) said in his general platitudinous way in the argument which he has just read to us that the lower courts have been honest. I do not know what his experience has been but I doubt very much if he ever has had any actual experience with our courts. He is not a member of the bar and judging from the manner in which he read his argument, he has not any familiarity with the evils that beset our present system. Let me call his attention to the report of the Commission on the Inferior Courts in the county of Suffolk, appointed in accordance with the provisions of chapter 79 of the Resolves of 1911 and which is known as House Document No. 1638 of 1912. Let him look at page 8 of that report wherein the following, among other things which I have not the time to call to the attention of this Convention, are enumerated as faults of a system which prevails not only in Boston but throughout the whole Commonwealth.

> In one court, sentences for drunkenness are largely predetermined by the court upon inspection of the probate officer's report of previous convictions, right or wrong, and this in the absence of the prisoner . . . In certain courts a policy prevails a fining in practically all cases of persons arrested for drunkenness who are not residents of the particular districts.

There is a most uneven form of justice prevailing in this Commonwealth due entirely to the fact that many of the judges of our courts are entirely unfit for their work and will not change their ways even though the whole community is aroused at the demonstrations of unfitness that frequently are exhibited. Look at the judges who lobby in this Legislature, year in and year out to increase their salaries or to secure an increase of salary for their clerks or court attachés. Direct your attention to the scandalous proceedings that are prevalent in some of our courts where associate judges practice before the regular judges, only in turn to find the regular judge appearing in cases before his associate judge. Think of a situation where a judge will issue a warrant against a man and then take a retainer to defend that same man against whom he has issued the warrant and having the case tried before his associate. Think of the judges in all our local courts who wish some favor from the Legislature, who continually and openly are favoring lawyers who are members of the Legislature in order to secure their good-will and vote! These are

evils that indicate that the men who practice them are unfit for their office. Men know that what I am saying to-day cannot be challenged or contradicted and yet a member like the gentleman from Amherst arises and proclaims that there is no remedy for such an evil. I cannot believe it. Gentlemen, we must use our judgment and we must do something at this time. If there is a conceded wrong and an evil to be redressed, can we not find a remedy, even though it be very warm and even though members have been sent for and brought in here through the activities of the judiciary committee to defeat any proposition seeking to change our present system? Can we not here to-day find some word that will protect all our good judges and at the same time provide a means of getting rid of unfit members of the bench? I yield to no one in a desire to have all kinds of safeguards thrown around a good judge, but I want none but good judges to sit on our benches. I cannot tolerate any petty monster on the bench, nor do I like ill-mannered, ill-tempered judges, displaying personal idiosyncrasies in defiance of the law, conducting themselves in the court as though they were proprietors, forgetting themselves and the great dignity of the office that they fill and bringing about a contempt of our courts. Everything should be done to hold our courts in the very highest respect by all classes of people and there should be no blemish allowed to exist if it possibly can be removed. There can be no possible excuse for having an ill-mannered or impatient or intolerant judge on the bench who displays his lack of training or unfitness by abusing either lawyer or party. There can be no excuse for judges being impolite or discourteous. The professor (Mr. Churchill) says that some judges may be excused for their bad manners because some of the lawyers also who appear before them may be guilty of having bad manners. This is a poor form of reasoning and a very much poorer excuse for keeping a judge, unfitted by bad manners, on a bench in Massachusetts. There is no possible excuse for a judge having bad manners. Bad manners in itself unfits any man for this important position. It should be the duty of the bench to try to elevate the bar and the members of it by showing that the judge at least has good manners. I see about me now many members who have come in, in the last half-hour, in response to the call of those who are interested in defeating this proposition to-day, while at the same time many members who favor it are absent because they did not know it would be reached for consideration to-day. It is unfortunate that you members have not been present to hear the discussion, but let me repeat once more to this Convention that there is no subject nearer to the people and that there is no greater duty imposed upon the members of this Convention than that of doing whatever is necessary to elevate our courts to the very highest point of perfection. It is a mistake to believe that the judges are perfect or that our present system is perfect. I urge you gentlemen to accept the amendment which I have offered because in one word there can be no justification in Massachusetts for any member of this Convention voting to keep seated on our bench an unfit judge.

Mr. WHIPPLE of Brookline: Under our Constitution the judges of our courts are selected and appointed by the Governor, with the advice and consent of the Council. In making these appointments

what do the Governor and Council decide? Is it not whether a particular candidate is fit to occupy judicial office? Do any of the gentlemen of this Convention say that the Governor is not fitted for an equal responsibility, with the advice of the Council, to determine whether an incumbent of that office, by reason of advanced age or temperamental characteristics, has become unfit longer to occupy it? Cannot the chief magistrate of our Commonwealth, who determines their fitness for the purposes of appointment, be trusted to determine when and whether judges no longer are fit to occupy the position? I see no reason why, when a man has been appointed and it develops that possibly a mistake has been made, or when his temperament or character has changed, a judge should not be removed by the same tribunal, which then determines that he is unfit, which originally determined that he was fit. I therefore earnestly urge that we have this provision for the easy determination of the fitness or unfitness of a judicial incumbent so that those who are unfit, — and nothing is worse in the administration of justice than an unfit judge, — may thus be removed from office.

Mr. CHOATE of Southborough: It seems strange that so simple a question can arouse such a storm of oratory. All these provisions that bear upon the selection and qualification of judges have for their purpose simply the obtaining of the best possible men to sit upon the bench, and in dealing with them it seems to me that we ought to treat them calmly and deliberately for the purpose of ascertaining whether they accomplish that purpose or not. It is not a question of whether occasionally there may be an unfit man upon the bench; it is not a question of whether we should deny the Governor the right to express an opinion upon that question; it is whether on the whole, with all the machinery that we provide to put the judge there and to keep him there, we are going to get the best possible men to serve us in that position.

There is a perfectly adequate method for removing an incompetent or unfit judge now in our possession. Address and impeachment has been used and can be used again, when occasion requires it, to remove a judge from the bench who ought not to be there. The objection, and to my mind the sound objection, to this amendment is that it allows complaints to be entertained without proper consideration, complaints to be entertained for which there is no sound foundation, complaints to be made in public, tried out, arising out of irritation and aggravation and disappointment, with the inevitable effect that they will act as a tremendous deterrent to the very men whom we want to serve us in that position. Do not lose sight of the fact that the man who is suggested for a judge is almost invariably a lawyer of experience and somewhat mature age, that he is obliged to give up the whole of his career and all the success which he has achieved in the practice of his profession and adopt a line of life and work which is wholly foreign to that in which he has been brought up, that he by accepting that position has absolutely unfitted himself, if he does his work well, to go back to the practice of his profession, that the removal of a judge by the method suggested by this amendment is to destroy him not only for his work upon the bench, — of course it does that, — but to make him discredited and impossible for further usefulness in his profession.

I take it that the Convention, having expressed already its opinion upon the second amendment offered by the gentleman from Boston (Mr. Maguire), will not change its view upon that, and I hope that the amendment providing for the removal of judges by the Governor and Council will not prevail.

Mr. Blackmur of Quincy: I desire to say just a word in reply to my friend from Haverhill in the third division (Mr. George) in his attack upon the committee on Form and Phraseology. I assure the gentleman from Haverhill (Mr. George) and the Convention that the committee did not intend to make any substantial alteration in the resolution as it was sent to them; they simply confined themselves to what they understood the Convention meant to cover in its resolution. I would respectfully call the attention of this Convention to our document No. 413 in this one single paragraph, and I read from the third or fourth paragraph:

> It is believed that the resolution in its original form was more comprehensive than the Convention intended. In that form it required that the retirement of judges for disability should be subject to all the conditions, such as age limit, governing their voluntary retirement. The revised form is thought to express the intent of the Convention.

So, gentlemen, it probably would have limited the Governor's Council to the removal of judges only when they were seventy years of age, and therefore we made the changes as suggested.

Mr. Balch of Boston: I desire to point out the fallacy underlying the plausible but misleading argument of the gentleman from Brookline in the fourth division (Mr. Whipple). The objection to this proposal is not to the tribunal before which complaints against judges are to come, but against the way in which such complaints are to originate. The objection is that anybody whosoever, no matter how irresponsible, can initiate an attack upon any judge with or without good faith and reasonable cause. The gentleman from Boston (Mr. Maguire) who is responsible for the amendment has asked how we could have had any power to get rid of unfit judges and yet avoid that. I reply that we easily could have done it. He could have done it if that had been his real purpose. For instance, he could have given the power of initiating complaints to a council or joint committee of the bar associations of the State or to a council or committee of the judges of the State or to any other of several responsible and specially qualified bodies. Such a procedure might have been safe. Instead he has left it free to any disappointed litigant, to any disgruntled attorney, to say, openly or covertly, to any judge: "If you do what we don't want we will 'get you.' We will frame a case. We will start a political drive on you. The very best you can hope for is to be upheld after endless bother, large expense, and all the annoyance an artificially stimulated hostile press can subject you to." That is the effect, — in my belief that is largely the purpose, — of this amendment. Gentlemen, do you wish it left open to any corporation to say to any judge: "If you do thus and so we will 'get you?'"

The amendment moved by Mr. O'Connell of Boston was rejected, by a call of the yeas and nays, by a vote of 80 to 119.

The first amendment moved by Mr. Maguire of Boston was rejected, by a vote of 26 to 103.

The second amendment moved by the same gentleman was rejected.

The resolution (No. 413) was passed to be engrossed Tuesday, August 6.

The Convention voted, Thursday, August 15, to submit the resolution to the people.

It was ratified and adopted by the people Tuesday, November 5, 1918, by a vote of 156,796 to 86,023.

Mr. Thomas J. Boynton of Everett presented the following resolution (No. 192):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

All judicial officers now in office or who may be hereafter appointed shall from and after the first day of January in the year nineteen hundred and eighteen hold their respective offices for the term of seven years from the said first day of January, nineteen hundred and eighteen, or for the term of seven years from the time of their respective appointments as the case may be (unless sooner removed by impeachment or by address of both branches of the Legislature to the executive) and no longer unless reappointed thereto.

The committee on Judiciary reported that the resolution ought NOT to be adopted. It was considered by the Convention Tuesday, June 18, 1918.

Mr. James F. Aylward of Cambridge moved that the resolution be amended by striking out lines 3 to 12, inclusive, and inserting in place thereof the following paragraph:

All judges of police, district and municipal courts, duly appointed, commissioned and sworn, shall hold office for the term of seven years, and upon the expiration of such term they may be reappointed. The present judges of said courts shall hold their offices for the term of seven years from the date of the adoption of this amendment by the people.

This amendment was rejected, by a vote of 53 to 79.

The resolution was rejected Tuesday, June 18, 1918.

THE DEBATE.

Mr. AYLWARD of Cambridge: I do not know that I can add anything to what I stated this morning. I believe with a great many members of this Convention that probably a great part of the criticism that has been directed to the courts is directed to the lower courts. I instanced some cases this morning, when there was not so large an attendance here, and they might bear repetition. I stated that the two upper courts each had a Chief Justice who to some extent controls the actions, — that is, the deportment, rather, — of the judges under him, but that the lower courts had no head, that each judge in each locality was a law unto himself as to how he should conduct both himself and his court. I stated further that there was a great grievance that had existed for many years, and that at various times people had come before the Legislature and attempted to have that grievance remedied; that was the appointment of Associate Justices and those Justices being permitted to practice in the courts of which they were Justices before their principal. I stated that it was not claimed particularly that there was any injustice meted out or that there was any favor granted to the Associate Justice, but the people thought he had

an influence with the court and through that thought, particularly among the foreign element, he was enabled, to the detriment of other men who practiced in the court to which he belonged, to acquire quite a business in that manner. I stated also that while the manner of conducting proceedings in some lower courts is very good in some localities, as for instance in my own district court, where the list is called at nine o'clock, as it should be, and the cases taken up in order, in other districts, although lawyers, litigants, doctors and witnesses, who may have been summoned, have arrived as directed at nine o'clock, they must wait until it suits the convenience of this particular judge, who comes trailing in at ten, half-past ten or eleven o'clock. There was no way for any one to say he ought to be there earlier; nobody has any control over him at the present time. Those were some of the reasons I stated. I stated that away back fifteen years ago when I was in the Legislature this grievance became so strong, namely, about the associates practicing in the courts, that a bill was introduced and favorably commented on for quite a time before the committee on the Judiciary, of which I was a member, to remedy the evil; that later on it appeared that in some of the smaller towns in the farther parts of the Commonwealth these Associate Justices were sometimes the only lawyers in their town, and that if they were prevented from practicing in that manner they would be compelled to resign. It seemed to me they ought to resign. But at any rate such was the sympathy for them among the members of the Legislature that the bill at that time did not prevail.

I do not think I ought to take up the time of the Convention. I do not think there is a lawyer in this Convention who at some time in his practice has not met with a great many of the evils that this proposal is intended to remedy. My amendment does not affect the present tenure of the men there, — of the men holding office. Under this amendment they would hold office for seven years and, no doubt, would be reappointed if they wished it; but hereafter those who would be appointed would know that the term was for seven years. This resolution would remedy other evils also, would have a salutary effect on many of the things that have been complained of in this Convention. For those reasons, I believe that if this amendment is adopted nine-tenths of all the criticism of our courts will cease and that the Legislature and the people will not be bothered any further on this subject.

The amendment was rejected, by a vote of 53 to 79.

The resolution (No. 192) was rejected Tuesday, June 18, 1918.

Mr. Charles O. Bailey of Newbury presented the following resolution (No. 191):

Resolved, That Article XXIX of the Declaration of Rights, Part the First, of the Constitution of the Commonwealth, and Article I of Chapter III, Part the Second, of the Constitution of the Commonwealth, are hereby repealed, and the following articles substituted therefor: —

Article XXIX. It is essential to the preservation of the rights of every individual, his life, liberty, property, and character, that there be an impartial interpretation of the laws, and administration of justice. It is the right of every citizen to be tried by judges as free, impartial, and independent as the lot of humanity will admit. It is, therefore, not only the best policy, but for the security of the rights of

the people, and of every citizen, that the judges of the Supreme Judicial Court should hold their offices for long terms if they behave themselves well; and that they shall have honorable salaries ascertained and established by standing laws.

CHAPTER III.

ARTICLE I. The tenure, that all commission officers shall by law have in their offices, shall be expressed in their respective commissions. All judicial officers, duly appointed, commissioned and sworn, shall hold their offices, unless sooner removed, for such fixed terms as may by law be established, but no judicial officer shall serve hereafter for more than fourteen years except by reappointment; and the Governor, with the consent of the Council, may remove them upon the address of both Houses of the Legislature.

The Committee on Judiciary reported that the resolution ought NOT to be adopted. It was considered by the Convention Wednesday, June 19, 1918.

Mr. Mancovitz moved that the resolution be amended by substituting the following new draft (No. 345):

Resolved, that it is expedient to amend the Constitution by inserting the following:

All judicial officers duly appointed, commissioned and sworn, of the Superior Court, Land Court, or courts hereafter created in their stead, shall hold their offices for the term of ten years, and all other judicial officers of any inferior court now or hereafter existing, shall hold their offices for the term of seven years. And upon the expiration of such term they may be reappointed. They should have honorable salaries established by standing laws, which shall not be increased or diminished during the term for which the judicial officer is chosen. The present judicial officers shall hold their offices according to their respective commissions; but hereafter when any vacancy shall occur excepting in the Supreme Judicial Court it shall be filled by appointment for a term as herein provided, but in no event to continue in office after attaining sixty-five years of age, excepting judges of the Supreme Judicial Court, who shall not continue after attaining seventy years of age. No person shall be appointed a judge who shall not have attained the age of thirty-five years, and have been ten years a citizen of this Commonwealth, and been admitted as an attorney for ten years.

No person shall be appointed a judge in any of said inferior courts unless at the time of his appointment he is a resident and qualified voter within the venue of said court, and his commission shall expire upon his removal from the venue of said court.

This amendment was rejected, by a call of the yeas and nays, by a vote of 61 to 142.

The resolution was rejected Wednesday, June 19, 1918.

THE DEBATE.

Mr. MANCOVITZ of Boston: I should like to ask a question of parliamentary procedure. Does the action on No. 115 preclude the moving of substitution of document 345 for the present resolution under consideration?

The PRESIDENT: The Chair rules that it does not.

Mr. MANCOVITZ: Mr. President, I move you, sir, that resolution No. 345 be substituted for the report of the committee.

Mr. LUCE of Waltham: In view of the fact that this resolution has been thoroughly discussed I move the previous question.

Mr. MANCOVITZ: I regret very much that the gentleman in this division (Mr. Luce) saw fit to move the previous question. He must be aware that there are a great many delegates to this Convention who believe in the merits of No. 345. Personally, as the mover of that resolution, I saw the point of the substitute offered by the gentleman from Quincy (Mr. Blackmur) and voted for the substitute

because I believed that went part of the distance, but we have not had a chance to vote upon the main question. Rather than endanger an improvement upon the present system I was willing to vote for the substitute, and thus bring before this Convention the main issue embodied in No. 345, and I hope the main question will not be ordered, so that we can discuss No. 345 and take a vote upon that.

Mr. O'CONNELL of Boston: As I understand the present situation, the motion by the gentleman from Boston (Mr. Mancovitz) brings before us the main question of limited tenure as covered in the resolution of the gentleman from Chelsea (Mr. Finn), that being No. 345, so that if the motion by the gentleman from Boston is passed we shall have an opportunity of voting on the measure that we have been talking about for the last two days, and I urge in all fairness that this Convention at least ought to vote on the subject that we are discussing. As a result of parliamentary procedure, the amendment being adopted, we have been precluded in the adoption of those amendments from voting on the main question. Now this substitute offered gives us an opportunity of voting on the main question itself, as to whether or not we want limited tenure of judges in this State; and I urge upon the Convention, whether they are going to accept it or not, that they at least in decency ought to permit the question to be put before them.

The amendment moved by Mr. Mancovitz was rejected, by a call of the yeas and nays, by a vote of 61 to 142.

The resolution was rejected Wednesday, June 19, 1918.

Appointment of District Attorneys.

Mr. Charles P. Howard of Reading presented the following resolution (No. 161):

Resolved, That it is expedient to amend the Constitution by the adoption of the following

ARTICLE OF AMENDMENT.

The Attorney-General shall be appointed by the Governor, and shall be removable by him. The Attorney-General shall be the head of the law department of the Commonwealth. He shall appoint for indeterminate terms such assistant Attorneys-General and such other subordinates as he shall deem proper, and he may remove them. District attorneys shall be appointed by the Attorney-General for indeterminate terms, and assigned by him to such districts as he shall deem most advisable. They shall be subject to the direction of the Attorney-General, and shall be removable by him.

The committee on County and District Government reported that so much of the resolution as relates to the appointment of district attorneys ought NOT to be adopted.

The resolution was considered by the Convention Friday, July 12, 1918; and it was rejected the same day.

THE DEBATE.

Mr. BALCH of Boston: I do not rise to speak on the merits of this measure, either for or against it; I am not at all sure personally that at any stage I shall favor it; but the joint committee on State Administration and correlated matters, now sitting, have drafted a resolution

which touches upon this same subject indirectly. The matter of the method of choice of an Attorney-General I hope will not be concluded at this stage. I hope that it may be left for consideration when the whole wide subject of the organization of the State and its departments comes before the Convention; and for that reason, and for that purpose alone, I hope, instead of being killed now, it may be kept alive on the docket to be dealt with on its merits at its next reading.

Mr. MANCOVITZ of Boston: If the gentleman who has just taken his seat in this division (Mr. Balch) will examine the calendar, he will find the report deals with only so much of the resolution as relates to district attorneys, and not Attorneys-General. Any action by the Convention accepting the report of the committee will not in any way affect his rights as to the Attorney-General.

Mr. BALCH: If that is the correct interpretation, then my remarks obviously would not apply.

Mr. PILLSBURY of Wellesley: I feel so deeply on this subject that I cannot allow the resolution to go to a final vote, and still less to rejection, without expressing my view of it to the Convention.

There are two proposals pending in this resolution and the next on the calendar, of which the one now under consideration is the more comprehensive because it involves appointment of the Attorney-General and the district attorneys as well. The next resolution is confined to the district attorneys.

There are no two more important offices under the government of the Commonwealth than the offices of Attorney-General and district attorney. In respect of the power which they actually exercise, a power as nearly arbitrary as our constitutional system permits, there is no other officer in the government to be compared with either of them. More than this, each office calls for the daily exercise of functions which are essentially judicial. They are offices which call for the exercise of judgment upon many questions of the most important and many of the most delicate character. It is speaking within bounds to say that the Attorney-General, by and large, is quite as powerful or influential a functionary as the Governor, and the district attorney a vastly more important character than any single judge of any court. As a rule we have had good men in these offices, in spite of the system of selection, but there have been some serious exceptions which ought to be impossible in Massachusetts. Down to the Know Nothing craze of 1854–55, these officers were appointed, as they ought to be, because they ought to be removed so far as possible from the direct control of popular prejudice or popular clamor. I say that, knowing the stigma which is affixed here to anybody who says anything about popular clamor. The thing from which the administration of these offices ought to be absolutely removed at all times and under all circumstances is the temptation to curry popular favor or pander to popular prejudice, which excites or is excited by popular clamor, and once excited, is deadly, for you cannot reason with it. It is the one thing that cannot be reasoned with.

In 1854 and 1855 the Know Nothings obtained control of the government of Massachusetts, upon the anti-Irish and anti-Catholic issue, a movement directed wholly against the foreign immigrant, who at that time was the Irishman and nobody else, and against the influence of the Catholic church in our politics. They made these offices, which

had previously been appointive, elective, because, as I suppose, they wanted direct control over them. That is the source from which the rule proceeded that we are now called upon to deal with. I should not suppose that any man of that race can take any peculiar pleasure in voting to continue in effect a system which was established as a stab at his own race and religion. Of course that reason does not affect my view of this question, to the slightest extent; but the general reasons in favor of making these offices appointive are so strong that I hope that the Convention will at least give the resolution another reading, so that it can be further discussed.

Mr. Bartlett of Newburyport: I introduced an order for a similar purpose, — about district attorneys, — and it got by when I was not looking; therefore I will speak upon this. I have had more than thirty-nine years' experience at the bar, and I am thoroughly persuaded that if there is any officer in the Commonwealth who ought to be an appointed officer it is the district attorney. We provide in the Constitution that judges shall be as impartial as the lot of humanity will admit, and when we have an officer who has more power over the accused that come into court than the judges do, he ought to be as impartial as the lot of humanity will admit; he ought not to be swayed by any political considerations, he ought not to be subject to any influences by anybody; and if I had my way he would be appointed for a term that would put him beyond all such influences.

The most honest district attorney with whom I ever dealt, a man who I thought tried to do exactly right, brought an information against the owner of a quarry, because he said the quarry was a nuisance to the public. He had a number of people come in and complain of it, so he brought this information. But when he found that there were twenty-odd voters who worked in the quarry the merits of the case vanished, and he tried to see how he could get out of it.

I have seen a good many instances of sinister influences imposed upon district attorneys by people in the liquor interests, particularly in days gone by; by people in other interests in days that are. I remember one instance in which we had a strike, and I represented a shoe manufacturing concern. We drove out of town most of the violent members of that organization that had struck by getting out warrants and letting them know that the warrants were out; but we got word one day that a "slugger" was coming to town, and we did not know when he was coming or who he was. But he appeared. He knocked a strike-breaker down and knocked him against a policeman. The consequence was the assaulter got into court, and when he was asked in court if he would do it again if he had a chance he said he would. He was sentenced to sixty days' imprisonment. He appealed from that sentence. Apparently there was no power on earth that could make that district attorney sentence that man, — in my judgment all the influence was brought to bear that could be, — a man who openly in court said he would violate the law of the Commonwealth again if he had a chance. Was there any sinister influence about it? We thought there was.

Take the liquor business. I remember going into court with a man who had four complaints against him, and the evidence was so overwhelming that there was not a possible scrap of a chance for that man to escape by any legitimate means from the penalty. The least evi-

dence there was, on any of the days on which he was complained of, was of a hundred sales in his establishment.

Debate was continued after the recess.

Mr. BARTLETT: As I was saying at the adjournment, district attorneys under the present system are too much subjected to influence. I was citing the man who had the liquor cases. I could not do anything for him, I had about twenty more desperate cases, and he got some one else, but I watched the course of it. I say that political influence was brought to bear. By various excuses the case was continued from time to time until the evidence disappeared. This is the old story. These are illustrative instances. District attorneys are subjected to such influences, not only from politicians and political committees, but personal influences and every sort of influence that can be brought to bear. I do want to say that the district attorneys as a whole are good men. They belong to the honorable profession of which I am a humble member, and that is a good deal. They are good men. They are men generally of good judgment, and humane men, and want to do right, but they are subjected to these influences. Sometimes the influences are such that they have effect, sometimes they are not; but they ought not to be subjected to them. And sometimes they are put in a position where strong suspicions are raised against them which ought not to be raised. I do not suppose that there is a district attorney in the Commonwealth, or ever was one, but would like to have his tenure of office such that he could be approached no more than a judge, and a man who would dare to approach one of the judges of our higher courts, at least, by influence, would run more danger of the resentment resulting being worse for him than if he had not said anything. He would find it resented. He would find the judge, if anything, leaning the other way. When we have the power in the hands of the district attorneys which they have, the power of saying whether or not a man shall be sentenced, the power practically of saying whether or not he shall be put upon probation, almost the power of saying exactly what the sentence shall be as the thing goes, if there is any official who ought to stand upon the same basis, have the same freedom that the judges have, it is the district attorney. And when we can have it, when we can have that system by which they shall be as impartial as the lot of humanity will admit, the system by which we appoint our judges, why should not we apply it to officers of this sort?

In 1853 or 1857, I think, the change was made that district attorneys be elected. It seems apparent that the reason for that was that the Know Nothings were in control and the Know Nothings wanted to control the district attorneys.

Of course the argument that the appointment of district attorneys is also in favor of the short ballot applies. The district attorney also ought to be free from having to make a campaign. He ought to be free from the thought when he is put before a jury: "How can I make all these jurymen think I am the greatest man in the world, so that they will back me in the next campaign?" I have seen some district attorneys who I think had as the most prominent thought in their minds: "When I get through this term of court will every juryman go out of here my solid supporter, and can I get these jurymen in such shape that they even will bolt their party to support me?" I

hope that some measures by which the appointment of district attorneys will take the place of the present system will pass the Convention.

Mr. SHEA of Dalton: I should like to ask the gentleman who last spoke how he interprets the words "indeterminate terms," and if he has any opinion on the tenure of the district attorney's appointment.

Mr. BARTLETT: I would say that I have not observed the particular terms of this particular document. It has got the principle in it of the appointment of district attorneys. My measure which, as I said, got by when I was not looking, provided for appointment by the Governor. But by adopting this resolution at this stage we can hold on to that principle of the appointment of district attorneys and change the resolution as the Convention shall see fit to decide.

Mr. DAVIS of Cambridge: I should like to ask the gentleman in the third division (Mr. Bartlett) a question. Before the recess he cited a case of a liquor dealer convicted of four offences, and said that the case never was heard of when it reached the high court. That means, of course, the Superior Court. Now, in regard to that case, does he not know that the law requires, before that case could be disposed of without trial, the written consent of the judge presiding at the session was necessary before it could be disposed of?

Mr. BARTLETT: I would say that I never found that written consent. I did find this: That at that term at which it should be tried the district attorney notified me the man was sick. I saw his mother the next day, and she said he was sick down at the beach. That night I was down at the beach, and they said he was sick up here with his mother. But it went over because he was sick. The next term of the court he was on the jury, and of course they could not try a man who was on the jury. The next term of the court his case was reached the last day of the term, it was in the winter, and he was down at Nantasket Beach or somewhere along the south shore, and could not be reached or found by telegraph or telephone. What happened to it afterwards I do not know.

Mr. LOMASNEY of Boston: May I ask the gentleman a question? I should like to ask the gentleman if the law does not require that in election cases as well as in liquor cases the consent of the judge presiding in court must be had before the case can be *nol prossed.*

Mr. BARTLETT: So far as I know it does, but these things happen.

Mr. ADAMS of Quincy: I have one word to say about this question of the appointment of the Attorney-General.

It appears to me that this Convention never has taken a serious view, or what it seems to me is a serious view, of the questions which are involved just at present. In the condition which the world is in we never are going back again to the conditions which prevailed before this war began, and I think that we might as well, all of us, make up our minds to that great fact. We never shall be a civilization such as we have been in the past, and we must revise all our ideas, in order that we may keep pace with the events which are surrounding us.

In regard to this question of the appointment of officials I conceive that there is a great issue involved. It is the question of what we call popular government. I submit that what we call popular government, or have called popular government in the past, is not popular government now and never will be popular government again. It is an

entire mistake for us to suppose, for example, that what we call Czarism, that is to say, the government of Russia before the revolution, was a government against which there was a revolt because the Czar was absolute. He was not absolute in the sense in which he is believed to have been absolute. He simply was a representative of special interests, and it was because he was a representative of special interests that he was overthrown.

The despotism under which the world is suffering now is not a despotism of individualism. It is a despotism of special interests. And as my friend below me (Mr. Pillsbury) has said very justly, there is no such despotism as the despotism of a popular majority, and there is no such untrustworthy official as an official who is seeking votes. Those are the dangerous men. What we are trying to obtain now, and what the world is more and more bound to try to obtain in the future, is the suppression of special interests. It is the protection of the whole. That is the one great principle, as I understand it, of popular government now. It is the one thing which is going to separate popular government in the future from popular government in the past, when we believed that everything was to be cured by a vote. It is not that. 'Everything is to be cured by the concentration of power in some one who really will protect the whole community, the interests of all of us, not the interests of any special class, not the interests of any special majority, not this man or that man or the other man, but the interests of the whole. That is, as I understand it, the scope of government in the future, and as we can approach that we are doing a good work, and as we approach the opposite we are doing harm.

It is for that reason that it seems to me that this resolution, which is favored by my friend, is of very great importance, and I conceive that his advocacy of it was an admirable speech before this Convention. It is a principle which I myself cannot press too hard. I feel it very deeply. It is the one thing which can be the salvation of a democracy and it is the only thing. A democracy which seeks to be a government for the whole people and becomes the government of a special interest or a special majority is the worst despotism that you can have.

This question obtrudes itself on us in every question which has arisen before us. It must intrude itself upon us in every question which shall arise before us. It is the question of the protection of the whole. In other words, it is what is popularly called by that name which is so detestable to this Convention, — it is State Socialism. State Socialism means that the State is the property and the instrument of all of us, and you see the process advancing every day. To-day, for example, it is the taking of the telephone by the government. Yesterday it was the taking of the railroads. The telephone and the railroads, once taken by this government, never are going back. They never can go back, because those are the interests of all of us. They are not the interests of one special corporation or another special corporation. They are the interests of the whole, and they must be managed for the whole and not for any special corporation or any special interest. If we are going to suppress crime we must suppress crime by a man who represents the whole and not a special portion of the community who have voted for him. And that is the principle. That is the principle which we now are sitting here, as the first assembly of this kind which has undertaken to take action since this great war

began, to consider. It is that great principle which I hope we shall express before we rise, and it is for that that I believe this resolution ought to pass.

Mr. Mancovitz of Boston: I agree that the office of district attorney in this Commonwealth is a great and powerful office, and it is the one office that stands between judicial tyranny and the people's rights. Members of the legal profession who have practiced in the criminal courts in our Commonwealth know what that means. The rules of procedure in our courts are such that the truth very seldom appears before a jury in the trial of criminal cases, and the only place where the truth can be brought forth, — the interest of the parties in the prosecution, the witnesses in the Government case, the strong point in the defendant's case, — is in the frank and fair discussion with the district attorney in his office, where the prosecuting officer and his witnesses, the defendant and his witnesses, sit down and discuss the matter. If there is any merit in the defendant's case which would not appear in the course of a trial, the prosecuting attorney will use his judgment and see that mercy is shown and justice is done.

Have we heard from any one in this Convention, or from those who appeared before the committee in favor of this proposition, that there has been abuse of power or that there has been corruption in the office of the district attorney? No. No such condition exists in this Commonwealth.

The distinguished gentleman from Newburyport who appeared before the committee last fall (Mr. Bartlett) found fault because, in the liquor case in which he was interested as counsel for the parties who started the prosecution, he was unsuccessful in sending the offender to jail. He did not know, apparently, that chapter 100, section 65, of the Revised Laws provides that in liquor cases the district attorney is powerless to make a recommendation, or to *nol. pros.* or file a case. The case must be dealt with by the court itself. And so it is true in election cases, as well as non-support cases.

In Suffolk County, where I practice and have practiced for nearly 18 years, I believe the criminal docket will show 10,000 cases a year. If you are going to try each case before a jury and a judge, it will be necessary to increase your courts tenfold and it would become necessary to increase the staff of the district attorney's office tenfold so as to enable him to try each case.

A delegate in this Convention who is a judge of an inferior court appeared before the committee in favor of the appointment of district attorneys by the Attorney-General. Why was he in favor? His answer, at least to the committee, was frank, and this was his answer: He thought that the district attorney should send for him and obtain his views as to what disposition should be made of the case he tried and from whose decision the defendant appealed.

Mr. Bryant of Milton: I should like to ask the member who is speaking why he thinks that those statutes were passed if it was not on account of some abuse of process by the district attorneys.

Mr. Mancovitz: I would point out to the gentleman and to those who believe in the proposition that in case there is abuse of authority there is ample power in the General Court to stop that abuse, — to restrict it.

Mr. O'Connell of Boston: Let me say, in answer to the question

proposed by the gentleman from Milton (Mr. Bryant), that those laws were made at the instance of the district attorneys, who came to the Legislature and asked that they be relieved from the pressure, and the principal moving cause that the gentleman from Milton intimates came to protect abuse by the district attorneys, went on the statute-books at the request of the district attorneys themselves.

Mr. Bryant: Why not relieve the district attorneys from pressure in other cases?

Mr. Mancovitz: I might say to the gentleman: Relieve the General Court of its functions, and the judge of his functions and have one man act as your creator, administrator, enforcer and dispenser of laws.

I was amazed at the distinguished gentleman from Quincy (Mr. Adams) in this division saying that he believed this proposition is a step forward, — a step forward in democracy. He cites the condition of Russia. Why, the Russian revolt, the condition of Russia, arose because there was a centralization of power in the hands of a few, because the great mass of people could not reach those who had the enforcing power. Those were the conditions that caused the revolution. Just as soon as you change our present system as affecting the district attorney, we will be called upon by the people to change the present method of appointing the judges. The great savior of your judges has been the district attorney, because the poor man without counsel and the unfortunate who have occasion to come into the criminal court do receive the advice and assistance of the district attorney's office; because the district attorney acts not only as attorney for the government, but also as attorney for the defendant, as the defendant is a part of the government whose interests are to be protected. What evidence has come before this Convention that a change is required? None. One delegate to this Convention came before the committee and found fault with the district attorney because the district attorney did not see fit to come and ask him what disposition should be made of the cases. Think of it! Our Constitution gives a man a right of appeal, gives him a right to trial by jury, and if the district attorney sees fit to make a change of disposition, either by a fine or probation, the lower court justice finds fault because the district attorney does not send for him and say: "Here, Mr. Judge, do you think I ought or ought not to change your disposition?" That was the reason why he believed in a change in the system. Do you believe that should be taken into consideration? All men of common sense will say no, it should not.

Men have sat in this Convention and said that they believed in popular government. I am beginning to believe they do not mean what they say. The delegates are afraid of the people. They want to curtail the power of the people. They want to put the power of government in the hands of the few. If you believe in the present thought of democracy, it is my view, sir, that every possible opportunity should be given the people to express their choice upon the public officials, especially those who are charged with the enforcement and administration of law, and I fully expect that the Convention will sustain the report of the committee.

Mr. Benton of Belmont: This is a subject upon which no doubt a very large majority of this Convention certainly is ready to vote,

because 150-odd members, as I understand it, are lawyers; they all have made up their minds how to vote on this question. I am not in a position to give very expert judgment on it, but I am in this Convention not to change the Constitution of this grand old Commonwealth in any way unless some good reason is shown for it. I think as long as we have a unanimous report of the committee that this change should not be made, and inasmuch as our Attorneys-General almost without exception in the last few years have come from those who have served in the office of district attorney, it seems to me the case has not been proven that a change is necessary. You must bear in mind that the district attorneys are elected for three years. They all have been very honorable men, so far as I know anything about the district attorneys. Take those who have held the office of district attorney and see how they have gone to be Attorneys-General. Our present Attorney-General, Mr. Attwill, was district attorney in Essex County. Two distinguished members of this Convention have been Attorneys-General, but they have not been district attorneys, and there is a very good reason why. The honorable gentleman from Wellesley (Mr. Pillsbury) was not district attorney because he lived in Suffolk County, and nobody would think of running against Mr. Stevens, because he had both nominations all the time. The distinguished member from Everett (Mr. Boynton), although his being a Vermonter would qualify him for any office, could not be elected district attorney in Middlesex County because he was a Democrat. Now we take some of the others. I will be very brief, gentlemen, but I want you to appreciate this. Mr. Swift was Attorney-General, and was district attorney in his district. Mr. Malone was district attorney in Franklin County, Mr. Parker was district attorney in Worcester County. Mr. Knowlton was district attorney. Mr. Marston was district attorney. Mr. Waterman was district attorney. And probably a lot of others. We have a distinguished member here, Mr. French; he never was Attorney-General, but he was a district attorney and nominated by both parties. He was afterwards United States Attorney. And we have Mr. Justice Moody of the Essex District, who was district attorney there. He was afterwards Attorney-General of the United States.

I shall vote for the committee's report, and not to make any change.

The resolution (No. 161) was rejected Friday, July 12, 1918.

XV.

INJUNCTIONS AND LABOR DISPUTES.

Mr. Arthur N. Harriman of New Bedford presented the following resolution (No. 150):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The labor of a human being or the right to labor is a personal right and not a property right or a commodity or an article of commerce. The right of any person to leave the employment of another either alone or in company with others shall not be denied or abridged, or its full exercise impeded or invaded by any act of the General Court or by any order of or proceeding in any judicial court. It shall not be unlawful for working-men and women to organize themselves into, or carry on labor-unions for the purpose of lessening the hours of labor or increasing the wages or bettering the condition of the members of such organizations; or carrying out any legitimate purposes as freely as they could do if acting singly.

The committees on Labor and Judicial Procedure, sitting jointly, reported that the resolution ought NOT to be adopted (Messrs. Brown of Brockton, Ross of New Bedford, Donovan of Lawrence, Shea of Cambridge and Skerrett of Worcester, dissenting).

The views of the majority and the minority of the committees in connection with the above resolution, and also resolutions numbered 30, 146, 219 and 220, presented respectively by Messrs. James A. Donovan of Lawrence, E. Gerry Brown of Brockton, Daniel R. Donovan of Springfield and James T. Moriarty of Boston, were printed as document No. 337, as follows:

The theory upon which all these resolutions proceed obviously is that if their promoters, the labor organizations, can get rid of the law of injunction and thus be free of the only effective power which the courts possess to prevent what is unlawful in their operations, they can control the labor situation and dictate terms to all who wish to engage in labor or to employ it.

Resolutions Nos. 30, 150, 219 and 220 propose to forbid the issue of injunctions in labor disputes, making them alone an exception to the general law. This would result in preventing employers on the one hand, and employees, whether belonging to a union or not, on the other, from effectively enforcing their legal rights in the courts. It would deprive all these persons of the equal protection of the law. Such legislation, as enacted in our St. 1914, chap. 778, has been held by our court to be in conflict not only with our own but with the Federal Constitution, which is beyond our reach. In other words, it is the declared law of Massachusetts that the proposed action would not be valid or of any effect.

There are many and serious objections to the proposed resolutions if they could be carried into effect. They divide the citizens of the Commonwealth into two classes, employers and employees of labor in one class and all other citizens in the other. They put the first class above and outside the general law and leave them to fight out their battles by strategy or force while the public, which has to suffer the consequences, must look on powerless to prevent the resulting paralysis of industry. It can readily be imagined what would happen if the public service corporations, for example, were to suspend their operations with no power in the Commonwealth to compel them to resume their functions. It would amount to surrender of its powers by the Commonwealth into the hands of the corporations.

As to the effect upon others, a small employer or a non-union man would be powerless in the hands of the body of organized concerns, whether combinations of labor or of capital. The labor-unions themselves could not protect their rights in court. It is true that they are willing and prefer to trust rather to the dominating power of their organizations, but from their own point of view they are unwise in trusting to force rather than to their rights and remedies under the law. From the point of view of the public, they should not be made independent of the law. To confer such a privileged status upon a particular class would not be permissible even if the object deserved favor; much less when the object, openly apparent if not openly avowed, is to control and dominate others equally entitled to the protection of the law.

Resolution No. 146 seeks to incorporate into the Constitution the undisputed abstraction that the right to labor and enjoy its fruits is inherent in the individual. Of course it is, but to declare this in the Constitution would add nothing to the rights of any citizen.

To declare that labor is not property or a property right is a very different matter. It reverses not only the law, which we can do, but the truth, which we cannot do. The right to labor is plainly property, has long been held in law to be property, and is protected as such by law. It is, of course, a personal right, but it is so far in the nature of property, as capable of hire for reward, that the law regards it as also a property right and protects it as such. To a multitude of our citizens outside the labor organizations the right to labor is the most valuable property right they possess. To hamstring this right by taking away from them the only effective means they have of enforcing it would be so oppressive and unjust that it is not to be thought of.

The sole purpose of the resolutions in declaring it not property but a personal right is to put it beyond protection by injunction, as this ordinarily extends only to injuries to property or property rights; and their general purpose is to put the labor-unions in this particular above the restraints of the law, in order that, being free of these restraints, they may dominate and control all labor and set employers of labor at defiance, and having this power may dictate terms not only to independent labor but to employers and to the whole community, which will then be at their mercy; a purpose which does not commend itself to favor.

Shortly stated, among the reasons against doing what is proposed by the resolutions or either of them, these may be taken as conclusive: —

1. It would be idle and ineffective if in violation of the Federal Constitution, as our court has held it to be.

2. While that decision stands it would not become this Convention, in the face of it, to make such an experiment as this upon its power to invade the Federal Constitution.

3. Whether the decision is right or wrong, no man or class of men should be made superior to or independent of the law which governs all others.

4. The declaration that labor or the right to labor is not property is so plainly contrary to the truth that the proposal to put it into the Constitution is absurd upon its face.

5. The proposed action is not likely in the end to be in the interest of the people who seek it; on the contrary, it may prove disastrous to them.

6. It would deprive all independent labor and all employers of labor, who do not seek it, of the common rights which belong to all other citizens.

7. If operating as its promoters evidently desire, it would give to organized labor a virtual monopoly of the whole labor field on its own terms; which is inconsistent with the public interests.

James A. Lowell.
A. E. Pillsbury.

The undersigned members of the Joint Committee on Labor and Judicial Procedure dissent from the report of the majority on Convention document number 30, a resolution designating labor as a personal right rather than a property right and that injunctions should not issue unless irreparable damage is about to be committed and we also dissent from the majority report on Convention documents 146, 150, 219, and 220 wherein the portions of these resolutions contain substantially the definition of labor as contained in document 30, for the following reasons:

1. We believe that labor is a personal right and service and not a commercial commodity.

2. We believe that our civil and criminal courts can give justice to all without the use of injunctions which operate against the innocent as well as the guilty.

3. We believe that the proposed resolution is in accordance with the so-called Clayton Act, passed by the Congress of the United States and is now a part of our Federal law.

(Signed) E. Gerry Brown.
Samuel Ross.
James A. Donovan.
John T. Shea.
Mark N. Skerrett.

It appears to the undersigned members of the committee while concurring in the foregoing report, that this Convention may afford an opportunity to break the ground for an effective remedy for industrial disputes which at present confessedly is wanting, by empowering the Legislature to establish a tribunal adequate to deal with them according to their nature and character. The courts, proceeding as they must under limited powers and fixed rules, have not been able to adjust the relations between employers and employees to the satisfaction of either. Unrest and agitation are constant, disturbance and interruption of industry are frequent, and we live under the perpetual menace of labor strikes which but recently threatened paralysis of the transportation of the country and may at any time shake to its foundations the industrial system on which the people of Massachusetts depend for their prosperity and many of them for their existence.

While no machinery for dealing with industrial disputes may be able to reach and remove all the causes from which they arise, it is plain that some new agency better adapted to deal with them is imperatively needed, in the interest alike of labor, of employers of labor, and of the people at large. Voluntary arbitration is much resorted to, and the constant recourse to it shows the need of a tribunal with broader powers than the courts possess and the possibilities which lie in this direction. Arbitration, to be effective, must be able to enforce its awards, and the establishment of such an arbitral tribunal is understood to require some modification of our Constitution. Compulsory arbitration has been much discussed; it is not a wholly untried experiment, and many intelligent students of the labor question regard it as the ultimate and only effective remedy for the prevention and redress of industrial disputes.

So far as we can learn, this subject is not otherwise before the Convention. Without professing fixed opinions upon it, and without time to mature them, it appears to us that we ought to avail of this opportunity to enable the Convention at least to consider, if disposed to, a subject of so much importance to our Commonwealth. The accompanying draft of a resolution will serve to show a form of action in the line of the views here expressed.

David R. Collier.
Samuel F. Brown.
A. E. Pillsbury.
Chas. E. Hibbard.
Thomas W. Kenefick.
Scott Adams.
Henry M. Hutchings.
Chester W. Clark.
Edward A. MacMaster.

Form of Resolution Empowering the Legislature to Establish Compulsory Arbitration of Industrial Disputes.

To the end that industrial disputes or disturbances tending toward strikes, lockouts, boycotts or other interruptions of industry may be avoided or if arising may be more speedily and effectively adjusted, the Legislature may establish a system or systems of compulsory arbitration, for the prevention and redress of all disputes or differences, whether between employers of labor and employees in labor, or between employers, or between employees, or otherwise, arising out of, relating to or affecting the collective employment of labor; and may enact any legislation necessary or proper to make any such system fully effective by enforcement of the awards or decisions of any arbitrator or arbitral board or body thereunder, and otherwise. Anything in the Constitution inconsistent with the full effect of this article or of any legislation properly enacted thereunder, is hereby annulled so far as may be necessary therefor and no farther.

The undersigned, a member of the joint committee on Labor and Judicial Procedure, dissents from the report of the majority on Convention document No. 30 (and also on Convention documents 146, 150, 219, wherein these resolutions contain substantially the same definition of labor), and gives notice that for the purpose of obtaining the sense of the Convention upon a definition of labor freed from other subjects which are contained in the said resolutions, he will offer at the appropriate time, as a substitute, the resolution to be found in document No. 342.

E. Gerry Brown.

Document No. 342 is as follows:

Origin of Conflicting Definitions of Labor presented for Settlement in the Convention.

Congress passed a law known as the Clayton Anti-Trust Act. Therein Congress declares as the law of the United States, that the labor of a human being "is not a commodity or article of commerce." It is distinctly and unquestionably an organic declaration. It is contradictory of that which is now accepted as law in Massachusetts.

In line with the Clayton Law the Legislature of 1914 passed the following chapter 778:

An Act to make lawful certain agreements between employees and laborers and to limit the issuing of injunctions in certain cases.

Section 1. It shall not be unlawful for persons employed or seeking employment to enter into any arrangements, agreements or combinations with the view of lessening the hours of labor or of increasing their wages or bettering their condition; and no restraining order or injunction shall be granted by any court of the Commonwealth or by any judge thereof in any case between an employer and employees or between employers and employees, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment, or any act or acts done in pursuance thereof, unless such order or injunction be necessary to prevent irreparable injury to property or to a property right of the party making the application, for which there is no adequate remedy at law; and such property or property right shall be particularly described in the application, which shall be sworn to by the applicant or by his agent or attorney.

Section 2. In construing this act, the right to enter into the relation of employer and employee, to change that relation, and to assume and create a new relation for employer and employee, and to perform and carry on business in such relation with any person in any place, or to do work and labor as an employee, shall be held and construed to be a personal and not a property right. In all cases involving the violation of the contract of employment either by the employee or employer where no irreparable damage is about to be committed upon the property or property right of either, no injunction shall be granted but the parties shall be left to their remedy at law.

Section 3. No persons who are employed or seeking employment or other labor shall be indicted, prosecuted or tried in any court of the Commonwealth for entering into any arrangement, agreement, or combination between themselves as such employees or laborers, made with a view of lessening the number of hours of labor or increasing their wages or bettering their condition, or for any act done in pursuance thereof, unless such act is in itself unlawful.

The Supreme Court of Massachusetts, in the case of John Bogani *et al. v.* Giovanni Perotti *et al.* (224 Mass. 152) held the opinion that the statute cannot be sustained. The opening declaration in that opinion is: "The Right to Work is Property."

The issue with the declaration in the United States law is at once made. It is plain. It is complete. One is in direct opposition to the other. One is right and one is wrong. The National law says labor is not property; the Massachusetts Supreme Court, which unmakes the law enacted by the Legislature of Massachusetts, says labor is not entitled to this construction.

The court having assumed and declared as fundamental that labor is property the decision proceeds to place that kind of property under the protection of the fourteenth amendment to the Constitution of the United States and the property guarantees in the Massachusetts Declaration of Rights.

The court having thus interpreted or expounded its view that the Constitution of Massachusetts contains the declaration that labor is property, there is now offered as a declaration to the contrary the substitute resolution that "the labor of a human being SHALL NOT be deemed to be a commodity or an article of commerce."

ARGUMENT.

I disagree with the opinion of the majority (Document 337) that this substitute declaration "reverses the truth." I claim as a fundamental truth, that labor is not a commodity; that there may be labor IN a commodity; but labor never IS the commodity.

To illustrate, the power is IN a law; the law is the expression of the power. The power is antecedent to the law; the power represents the labor power which was exerted to express the will of the people. The law is what the will of the people has created, yet it is not a commodity.

Again the labor power of an officer of the law is not always sufficient to enable him to enforce the law; he needs the additional power of the law. The badge of an officer is the emblem of that power; they must be joined and act together.

The chemicals, fluids, etc. (commodities) entering into the physical body of a human being can be defined; but should THE POWER, which is THE MAN, and without which there can be no labor and the physical body is inert, should this Labor Power be defined as property? or failing of any definition of what the Labor Power is, may it not be safely declared that it shall not be deemed in this Commonwealth to be a commodity or article of commerce?

Is the freedom of this Power to act, — to give service or not to give service, — to follow the human laws which govern property?

The Clayton Act says "No", the Massachusetts Court says "Yes;" and slavery laws and its advocates said "Yes."

Labor at one time was recognized in law as a commodity, as an article of commerce, something that could be bought and sold the same as cotton and other articles which were the product of that labor could be bought and sold. That was in the days before and after the time when a Massachusetts minister (complete works of Abraham Lincoln, Nicolay-Hay) bought and sold Dred Scott. The Clayton definition is the only logical truth that justifies the legal act giving freedom to the slave.

One decision based upon common law and a later one based upon the Massachusetts Bill of Rights, — all men are born free and equal, — destroyed property title in labor in Massachusetts. If the slave was property the owner's bill of sale of that slave was good title. But somebody had stolen the original title. The Almighty Power gave the title to the Negro personally. It was inherent in him. It was a personal right. There was no property right there. The only attribute of property was his labor power to create Property.

The majority report says, in the sixth paragraph, — its nearest approach to an argument, — "it is of course a personal right, but it is so far in the nature of property as capable of hire for reward, that the law regards it as also a property right and protects it as such." For whom does it protect any property right which the Court assumes that labor has? Is there any doubt that the protection which the Court and the majority report now seeks to maintain is for the benefit of those who desire to give to labor less than labor is entitled to receive? Isn't the argument of the majority an appeal to prejudice against labor? Labor to secure its natural rights is forced to organize against the power of combinations of property which encroach upon those rights. The right to life and liberty is protected by the fourteenth amendment which also mentions property. It is the right to liberty and life which is given by the Clayton Act.

In support of this line of argument and to demonstrate the existence of the

two contending forces and which is the better entitled to ask for and to receive the support of the Constitutional Convention, the words of the late Senator Hoar are quoted. They are found in the Congressional Record at the time of the passage of the Sherman Act. They are as follows: —

THE CHIEF CLERK. On page 4, line 66, section 1, after the word "action," the Senate, as in Committee of the Whole, inserted the following clause:

Provided, That this act shall not be construed to apply to any arrangements, agreements, or combinations between laborers made with a view of lessening the number of hours of their labor or of increasing their wages; nor to any arrangements, agreements, associations, or combinations among persons engaged in horticulture or agriculture made with the view of enhancing the price of their own agricultural or horticultural products.

Mr. HOAR. Mr. President, I wish to state in one single sentence my opinion in regard to this particular provision. If I correctly understood the Senator from Vermont — I did not hear him fully, and very likely, hearing only a part of what he said, I did not apprehend it — he thought that the applying to laborers in this respect a principle which was not applied to persons engaged in the large commercial transactions which are chiefly aimed at by this bill was indefensible in principle. Now, it seems to me there is a very broad distinction which, if borne in mind, will warrant not only this exception to the general provision of the bill, but a great deal of other legislation which we enact, or attempt to enact, relating to the matter of labor.

When you are speaking of providing to regulate the transactions of men who are making corners in wheat, or in iron, or in woolen or in cotton goods, speculating in them or lawfully dealing in them without speculation, you are aiming at a mere commercial transaction, the beginning and end of which is the making of money for the parties, and nothing else. That is the only relation that transaction has to the State. It is the creation or diffusion or change of ownership of the wealth of the community. But when a laborer is trying to raise his wages or is endeavoring to shorten the hours of his labor, he is dealing with something that touches closely, more closely than anything else, the government and the character of the State itself.

The maintenance of a certain standard of profit in dealing in large transactions in wheat, or cotton, or wool is a question whether a particular merchant or a particular class of merchants shall make money or not, or shall deal lawfully or not, shall affect the State injuriously or not; but the question whether the standard of the laborers' wages shall be maintained or advanced, or whether the leisure for instruction, for improvement, shall be shortened or lengthened, is a question which touches the very existence and character of government of the State itself. The laborer who is engaged lawfully and usefully and accomplishing his purpose in whole or in part in endeavoring to raise the standard of wages is engaged in an occupation the success of which makes republican government itself possible and without which the Republic can not in substance, however it may nominally do in form, continue to exist.

I hold, therefore, that as legislators we may constitutionally, properly and wisely allow laborers to make associations, combinations, contracts, agreements for the sake of maintaining and advancing their wages, in regard to which, as a rule, their contracts are to be made with large corporations who are themselves but an association or combination or aggregation of capital on the other side. When we are permitting and even encouraging that, we are permitting and encouraging what is not only lawful, wise, and profitable, but absolutely essential to the existence of the Commonwealth itself.

When, on the other hand, we are dealing with one of the other classes, the combinations aimed at chiefly by this bill, we are dealing with a transaction the only purpose of which is to extort from the community, monopolize, segregate, and apply to individual use, for the purposes of individual greed, wealth which ought properly and lawfully and for the public interest to be generally diffused over the whole community.

Senator Hoar has expounded the principle which should govern in the Convention deliberations concerning labor. Labor is not property; it is not held for sale the same as property is held. Property has many attributes which labor does not have. The only attribute of property in labor which the majority, or its court, can trace is that labor is a service; or, to use the language of the majority is "Capable of hire for reward." When either definition "Serv-

ice," or "Capable of hire for reward" is given it is a begging of the question whether it is or is not property.

The makers of the Constitution wrote a section providing for the expenses of the government. If labor was property it should and would have been valued and itemized for taxation according to the custom of that time. Property and labor, property and life, — are differentiated in the Constitution. Labor belongs with life; not with property.

If labor is service, and service is property, then at what point or moment of transfer does service become property that cannot be taken without due process of law?

When a man is drafted into army service is his labor property? If his labor is property wherein does he lose the protection of the fourteenth article? If he is property when he is working as a member of a labor-union how does his status change when he is obliged to work for the United States government?

If labor or service is property does each man who is drafted contribute equally? If not why is one obliged to contribute more than another contributes, from the viewpoint of earning power, which he does if service is property?

To say that labor is not a commodity or article of commerce, or conversely to define labor as a power which is antecedent to property, a power without which commodities do not come into existence, is to recognize labor in any form as essentially a part of a unity.

This definition does not, as the majority say "divide the citizens into classes." The majority conception of what labor is, and what labor seeks to accomplish, does make the labor of a wage-earner as a laborer, of a different class from one whose labor is that of a professional nature.

Labor is the operation of the Universal Power to create; in the individual it is the individual expression of that Indivisible Power to create, — its highest function. When the labor power is exercised upon materials then the product of that kind of labor is a commodity or article of commerce. But the labor power is exercised when it finds expression through the production of an idea which may or may not be later clothed with the building designed by the labor power of the architect; or the fitting of the various parts to the building by the labor power of the mechanic; or the labor power used in evolving the laws that keep people out of trouble, or get them into it, providing for deeds, contracts, etc., concerning the building; or the labor power of the sermon which teaches the Brotherhood of Man, founded on the truth that all honest labor is an expression of the highest labor unity; and those who have ten talents of labor power should help, — not despoil, — those who have only one talent of labor power, for conscience is indissolubly diffused in labor power.

Not content with its majority report against the declaration that labor is not property and having finished its opinions that labor is property and is under the protection that is found in the fourteenth amendment to the Constitution of the United States nine members of the Judiciary originate a resolution which in entitled: "Form of Resolution Empowering the Legislature to Establish Compulsory Arbitration of Industrial Disputes." If this resolution is based upon their declaration that labor is property they should amend the title so that it might read "a Resolution to provide that in labor disputes, property may be taken without due process of law."

Prejudice often governs where reason should prevail. The majority opinion appeals to prejudice based upon what has been, and what may be. Truth does give power, but power should never be used which does not clearly find its base in truth. Sophistry may for a time blind the eyes of those who seek truth carelessly, but not those who have no desire for anything but the truth.

The only relief from the Supreme Court decision is in this Constitutional Convention. The declaration enacted by the Congress of the United States and signed by President Wilson establishes the principle as a law of the United States that the labor power of a human being is not a commodity or article of commerce. Will the Convention sustain the Massachusetts declaration?

Article V of the Bill of Rights declares that judicial authority is an agent of

the people and at all times accountable to them. This Convention is the people. Will it as a sovereignty sustain its Congress and its President of the United States?

The National Republican platform says: "We pledge the Republican party to the faithful enforcement of all Federal laws passed for the protection of labor."

The National Democratic platform says: "We have lifted human labor from the category of commodities. We have protected the rights of the laborers against the unwarranted issuance of injunctions."

The Massachusetts Legislature, following these pledges, enacted in 1914 chapter 778.

The Supreme Court has reversed that action.

The Constitutional Convention is asked to sustain the first four, by voting for the resolution contained in document No. 342.

The resolution was as follows:

The labor of a human being shall not be deemed to be a commodity or article of commerce. And the Legislature shall not pass a law nor the courts construe any law of the Commonwealth contrary to this declaration.

The resolution (No. 150) was considered by the Convention Thursday, July 18, 1918.

Mr. E. Gerry Brown of Brockton moved that the resolution be amended by striking out lines 3 to 15, inclusive, and inserting in place thereof the words "The labor of a human being shall not be deemed to be a commodity or article of commerce. And the Legislature shall not pass a law nor the courts construe any laws of the Commonwealth contrary to this declaration."

This amendment was rejected.

The resolution (No. 150) was rejected Friday, July 19, 1918.

THE DEBATE.

Mr. HARRIMAN of New Bedford: This is perhaps one of the most mooted questions that has been before the people of this Commonwealth. It has reached down into the very life of the people, and because of the conditions that have existed there has been a certain class of the citizens of this Commonwealth upon whom the contest has been forced, and I refer to those people in industry who have become organized. The entire labor movement, — and I make no distinction, sir, between organized labor and the labor movement, — has been affected by this usurpation of the power of the courts against the welfare and the well-being of the people. There are men here who will not agree with the position taken by those in the labor movement, but let me, if I may, trespass upon the time of this Convention to sketch in a brief and somewhat hurried manner the conditions that have given rise to this great question that has become involved in our industrial life.

It is inconceivable, sir, that those men who formed the first Constitution could have conceived of the industrial conditions which have come to exist in our present life. We then had an individualistic system which has gone on until it has become collective, and capital has organized upon the one side and labor on the other. It has become inevitable that these two forces, struggling for existence, sooner or later should be brought into direct conflict, and some time or other, under some conditions, somewhere, the battle line will be drawn, and then and there at that time, beyond the control of any

men upon either side of the controversy, the battle will be fought to a finish, and in that battle is concerned every private interest, the welfare and the well-being of the entire people of our country. This contest is inevitable. As I have said, those men who drew the Constitution did not realize, and they had no means of knowing, the conditions that are in industry to-day. As time has gone on we have found that the industrial problems of our life have entered the political field, and we are confronted to-day with problems which affect the welfare of our entire people. The bread and butter problems of our people are being debated upon the floors of Legislatures and are being decided not alone in the halls of labor organizations and upon the fields of industry, but they have been thrown into the parliamentary phase of our system and there they are for settlement, and they must be settled. There is no man here who can shut his eyes to the fact that sooner or later this great question of capital and labor has got to be settled, and for the peace and prosperity of our country it must be settled right.

I do not stand here to-day and say that all the virtue and all the wisdom is confined within the ranks of labor. Far from it. Neither do I ascribe to the other side all the vices and iniquities that human flesh is heir to. Under our competitive system both sides are obliged to depend for their very existence upon the question of the survival of the fittest. The weaker must succumb to the stronger. In doing this there is injustice. Now, then, this contest is inevitable, and as labor organizations have become powerful, and as they have desired better treatment and a larger share in the productions of their hands and brains, they have gone into the political field to get them, and they have gone, not as I wish they would have gone, as a political organization of their own, but they have gone in and sought to convert, either by persuasion or by coercion, the politicians of the various political parties, doing it out of dire necessity, and saying to them: "If you don't do as we say, if you don't follow as we wish you to do, you will be retired to private life". That has been one of the phases thus far, of this great struggle. What do we find? We find that some men have succumbed. Men have said that this is wrong, that it is class legislation. It is the only avenue that labor has taken to protect the worker upon the industrial field.

There is provided a court of last resort, and in this country it is the courts. And I say here to-day that the courts, as our jurisprudence system is constructed and administered to-day, are the last citadel of private privilege, and there private privilege is being defended upon this, its last bulwark for its salvation. The working people have risen and captured, or are capturing, the political arm of our government. To protect property is the primal mission of the courts, always has been from time immemorial, for the first property right was that of a man to own the labor of another man. And so to-day in the courts, not through any personal desire of their own, but through precedent and through that theory that property must be protected above everything else, what do we find? We find that these modern industrial questions are passed to the courts.

And I want to digress just far enough to say that there has not been an issue before this Convention, from the time the President's hammer fell in our organizing until to-day, that has meant anything

to the people of this Commonwealth that has not involved the principle of where does the determination of the police power of the people lie. That has been involved in every question before this Convention. The police power lies with the people. We admit it. But, sir, who is to interpret that police power? To-day the courts do it. To-day the courts have in their hands the power to nullify and make ineffective the legislation of the representatives of the people, and they do it, and you and I know that they do it. Need I refer to any more glaring case, and, sir, it may be the Dred Scott decision of the labor question, than that on the child labor law, or the more recent one of the Supreme Court of the United States in the case of the Hitchman Coal and Coke Company, where the Supreme Court of the United States has ruled that it is illegal for a man in the employ of another to ask a fellow-worker to join an industrial organization if in joining that it will curtail the privileges of the corporation by which he may be employed? Can you consider anything more dangerous to the liberty of the people than that?

Again let me refer to the child labor law, and I do it because it is typical of any Supreme Court. The child labor law was passed after a long, long campaign, and in it was involved the fact that some States which were perfectly willing, and others under the lash, — and I say it of Massachusetts as well as of other States, — under the lash of organized labor, declared that the labor of children was illegal. By and by it came to the court at Washington, our Supreme Court. After all this agitation, after child labor was admittedly wrong, and after Congress had passed a bill and after the President had signed it, a Supreme Court that is amenable to no force under our government, that has no responsibility to any one as an organization other than as its members in their own humble opinion may view those questions, that court by a majority of one has said that the act to curtail the commerce in child labor, and consequently kill child labor and make it unprofitable, is not legal.

Mr. Washburn of Middleborough: The gentleman is referring, I take it, to the North Carolina child labor situation and the recent decision of the Supreme Court. Does he mean to say that the Federal law which was there attacked rested on any exercise of the Federal police power?

Mr. Harriman: In reply to the honorable gentleman in the third division (Mr. Washburn of Middleborough) I want to say that I have reference to the Supreme Court decision which recently has annulled the child labor act, the Interstate Commerce Act.

Mr. Washburn of Middleborough: As I understand the North Carolina case the Federal statute rested on an assumed exercise of the interstate commerce clause of the Constitution, and on nothing else, and the decision of the court was in effect that that law invaded the police power of the States. It did not undertake to say that child labor was unconstitutional. The Federal law had sought to provide that products which were the result of child labor should not go into interstate commerce, and the Supreme Court said that such legislation was undue interference with the police power of the States. Is not that the fact?

Mr. Harriman: It is the fact, and I tried to make this point: That the police power lies in the people, and the police power that

governs the welfare of our entire people lies in the Congress of the United States, as does the police power of Massachusetts lie within the confines of its own Legislature.

Mr. WASHBURN of Middleborough: How can the gentleman say in one breath that the police power is within the jurisdiction of Congress alone, and then in the next breath say that the police power of Massachusetts rests exclusively with our State Legislature?

Mr. HARRIMAN: I want to say that to my mind the objection is not valid that the gentleman has raised, because interstate commerce means what it says, — States with States. To my mind, the answer is, if a majority of the States in this country ordain a certain thing it should be the law of our entire country. So far as the State itself is concerned it is left under our government to the States, but there are some things that radiate from our State into other States. And there is more of an argument, if I may digress, for National prohibition than there is for prohibition in each of the individual States. It affects them all. For that same reason the Supreme Court of the United States has no right to interfere with an act passed by Congress. I was assured this morning by a distinguished member of this Convention, that law was the administration of common sense and justice, and if that be so, is there anything that you can conceive of in common sense and justice anywhere where our flag waves and where American citizenship is supposed to rule, is there any thought in this land that would say child labor under any condition was right?

I have digressed somewhat from injunctions, and I would touch upon that later. In my belief injunctions are but a small part of the evil. They are one of the outgrowths of this tyrannical, — and I use it advisedly, — system that has grown up in allowing a few men to set themselves above the acts of the people. That is the clear drawn issue, and upon that issue I and I believe other labor men are willing to be measured.

It has been said in this Convention, said during the initiative and referendum debate, which some of you may recollect, that labor attacks the courts, that labor would do away with the courts. Sir, it is not so. Labor is defending itself and through itself is defending the people in their liberties against the encroachments of a system which has grown up in our courts and through our courts, and the sooner that it is realized the better. There are men, not labor men alone, but there are men who have sat upon some of the highest courts in this land, men who have occupied positions of Chief Justices of States, who say to-day, and say openly, that they believe, sir, that the Supreme Court of the United States should not have the power to pass upon acts of Congress. That, sir, is revolutionary to some, but it was not revolutionary at the formation of our government. When Mr. Justice Marshall decided the Marbury case and established a precedent many men doubted the wisdom of that decision, and Thomas Jefferson is quoted as saying that the Justice should have been impeached for that decision. And so you see that there has been all through, even from the inception of our government, that idea that the people should be free and untrammelled in their exercise of the police power which undeniably belongs to them. The labor movement has been charged with being opposed to the courts, with wanting to destroy them, but, sir, let me ask you as I

stand here to-day, and as labor men review some of the acts that have transpired and say that they have seen what we claim is injustice done, what can you blame us for thinking?

It is said here, and of course men may rise and say, that all men have an equal chance before the law. They do theoretically, but they do not in practical, every-day affairs of the courts. For instance, a man who has money, a corporation that has plenty of the wealth of the land, can hire good lawyers, smart lawyers, the leading lawyers of the bar. Not only that, but they can stand the expense of long drawn out litigation, or the making of long drawn litigation if it is for their advantage. Can an ordinary man, without money do it? Of course he cannot. I will admit, I am not attacking the individuals on the bench; if you once get before them you get justice so far as in my opinion they will give it. There has been an attack upon this floor in this Convention upon the election of judges. I voted for the election of judges because I believe that it would tend to take away some of the criticism and some of the ill feeling, and would make them a bit more democratic and responsible to the people, but, sir, either under an elective, an appointive, or a selective system of getting our judges the source of supply is the same, the lawyers. They are human, some good, some bad, all trying to do, I presume, as well as they can. But, sir, let me tell you that human selection does not create infallibility, and a judge may err, and what we are protesting against is a system that will allow even an honest man with a mistaken judgment to set aside the will of the people and allow bad legislation, legislation that ill affects the entire people, to become the law of the land, and that is the great, and the only great phase that affects the people of this country.

Now our injunctions. We find that injunctions have been issued for almost everything under the sun. Men have been thrown into jail. To show how injunctions are issued, during one of the strikes in Bethlehem in the steel works they got out injunctions against a body of men, hauled them up into court and finally went to trial, and they had this trial, and they had it in the office of the Steel Trust. They had constabulary all around that place and no man but the officers of the law was allowed, and one attorney for thirty-three men. The men were convicted and fined $1000 for throwing stones. Take the Debs case, — and that is a fair case in many ways. There are two lessons to be drawn from it. Debs at that time was the secretary of what was then the trainmen's organization. A strike was impending. The railroad men in Chicago organized, as did the labor men, knowing that the war was coming. The labor men employed an attorney, the railroads employed an attorney, and the strike came. The railroads' attorney went down to the Department of Justice and got himself appointed as a special district attorney and helped issue the writs against Debs. And I want to ask, would the Department of Justice have made a special district attorney out of the attorney for the labor men? That case was carried to the Supreme Court of the United States. There are two phases of it to which I want to draw your attention. It was decided, even in those days, that the Constitution of the United States was drawn so close that it had power over those working upon railroads, that they could not go out on a sympathetic strike. And in the Adair case, where a man was dis-

charged from his position because he belonged to a labor organization, that same court declared that the power of the Constitution was so loose, it was so loosely constructed, that they did not have any control over the employment of men in that industry. Mr. Debs was sentenced to six months in jail under the Sherman Act, — under one part of it. It went along, and that act was somewhat amended, and then came before that selfsame court, — true, with a somewhat different personnel, — the case of the Standard Oil Company. They were convicted, but instead of giving them six months in jail as they gave a working-man they gave them six months to rearrange their charter. Do you think that the labor people of this country do not realize and recognize those things? Can you blame them for believing that they did not get a square deal from that arm of the government? In nine cases out of ten they have had absolutely no voice at all. And I want to say now that I believe that the only cure, I believe that the thing that will strike right to the very roots of the evil which does exist, is taking from the courts the power to declare acts of Legislatures unconstitutional.

In this great contest that has grown up I want you to realize that fundamentally the law does not recognize the working-man. He has absolutely no protection, or recognition of his rights, under our law. It is said in our Constitution, and we are taught, that a man has an inalienable right to work. What does that mean? It means that he can work anywhere. And yet there is no provision made for his securing work if he is not to be employed at a profit, and if he does not work he becomes a loafer. If he becomes a loafer he becomes a vagrant. If he becomes a vagrant he gets into court and is convicted and becomes a criminal.

Now, these are in part the bill of grievances which labor has to present. There are men in this Convention who can discuss more intelligently the practical working out of injunctions. I am not going to cover that, for I do not think it is wise for one man or two men to cover the same ground. But I do want to say that when we go to court, and I want you men to realize it, particularly the lawyers in this Convention, we do not find fault as an organization, nor do the people, with the justice that is doled out between man and man. If I have a friend who goes to court, has a suit against another, loses his case, and then comes to me for sympathy, the only sympathy I give him is that he did not hire a good lawyer. That is his business, and does not affect the community at large. But, sir, it does affect the community where there is legislation, and particularly progressive legislation that is nullified or where there are injunctions issued against us. The only thing that can accrue to the benefit of the man who has asked injunction has been the power to discourage industrial organization among the men or among the women who work, and in nine cases out of ten injunctions that have been issued on the flimsy excuse that men would do some wrong have been issued with the direct and open purpose on the part at least of the manufacturer to discourage industrial organization.

And why do men fear industrial organization? Why is it that those men in industry who have grown strong and powerful through organization and through collective effort should seek to deny to their workmen the very weapon by which they became a power in their

industrial life? It is because they know that their profits and that their material prosperity have been made out of the labor of other human beings, and if they can make it a property right let me tell you they will in turn use it to further enslave the working people of this and every other country. I want to say now that while the chains of slavery were stricken from the black man, that did not abolish the system of slavery in our civilization; and that slavery exists where it is in the power of any man to say: "You can work for me or you can walk the streets", and then he does not employ men unless there is profit in it. And so the profit system goes on and on until at last it reaches that point where the workmen themselves are forced by economic pressure to do, — what? To benefit their condition, and the moment they start to benefit their condition they find themselves opposed to the material welfare of those who employ them.

I know of but a very few instances where labor has had anything personal against those who employed it. It has been the system that it has rebelled against. In our neighboring city of Lynn to-day what do we find? We find one of the greatest and most powerful organizations refusing to their men the right to organize, — and why? I have asked that question several times. Because it means that if the men organize they will get shorter hours of labor, they will get better wages and they will get better conditions, and they themselves will have a voice in the industry by which they earn their living. Now let us analyze that for a moment. It is wrong for men to organize, and if you men will read document No. 150, which I brought into the Convention, you will find that it allows men to organize, gives them the constitutional right, which we now believe they have, but which has been infringed by injunctions and by other acts of Legislatures and courts. We believe that they should have that right. If they organize it means that they are in a position to bargain collectively with their employer, it means that they are not going to work at the hour the employer says, or at his wages. It means that they are going to have shorter hours of labor. Is there a man here who will defend long hours of labor? They will when they are employed as attorneys, but not when they sit in this Convention.

Now let us come to wages. If the employee gets more wages, it means to a certain extent that there are less profits to those who employ them, therefore it is not good business, so far as the accumulation of dollars and cents is concerned.

Now we come to conditions, and conditions, let me say to you men, are many times more vital to the worker than his hours of labor or wages, for conditions mean health and safety of life and of limb. And out of that there is another phase, and I beg this Convention again to digress just a bit. Out of that condition has grown the demand for a workmen's compensation act. It has been touched upon in this Convention. And why came it about? It came about because of conditions in industry, where men, women and children were maimed and killed, and so the organized movement which represented the workers had to take on the burdens and come before Legislature after Legislature, asking for relief. And I want to point out, so far as those three defences which were made so much of, that they were placed in our law, not by statute law, but by judicial decisions, and

if there ever was a case upon record where working-men have suffered and where the people have suffered by judge-made law it was upon this protection of property by the courts.

I want to speak now in regard to our workmen's compensation. Some of you may not know, if you do not you all should know, of the bitter, bitter battle which was conducted in this very room for this great measure; and who opposed it? Why was it opposed? It was opposed for the very reason that it meant less profits to the employing interests of this Commonwealth, and you cannot advance a single argument other than that.

I challenge any man on this floor to say that there was any other reason for that, only that it meant more money to the workers and therefore it must come out of industry. And so there was established in this Commonwealth the theory that industry should bear at least a part of the burden, and a law was passed. It is very interesting. The law was passed, and the people assumed that it meant what it said, that the workers of this Commonwealth were to be protected in industry. It did not go as far as it should have gone. The State, to my mind, should have established a State fund and forced every man into it. And at once and for all, and this is where we should have the police power, they should have declared that there should be no agency in the Commonwealth that should make money out of the crushed bone and sorrow and suffering of the workers, the producers, in this Commonwealth. That is the theory of it.

Now, what does the decision of the court do? A man said to me in the lobby this morning that that did not amount to a great deal; but it does, and I hope to be able to show the Convention, at least what our fears are by past experience, that it amounts to a great deal. The Supreme Judicial Court through a decision in 1915 on the assumption of risk, and I read that "the 'assumption of risk' meant that by accepting employment in any industry the workmen entered into an unexpressed, tacit contract that they would bear all the suffering and loss that came to them," the court found that practically all cost and loss were to be accepted. The Workmen's Compensation Act abolished this cruel and unfair doctrine, along with two others which the courts had created, "fellow-workmen" and "contributory negligence". But the Supreme Judicial Court in Ashton *v.* B. & M. R.R., 222 Mass. page 69, tells us that

> It is well settled that where one is employed to perform manifestly dangerous work, there is no liability where the risks growing out of the work are assumed by the laborer by his contract of employment.

Thus the Supreme Judicial Court in 1915 ignores the law of 1911 which abolished the doctrine of assumption of risk, and it assumes the existence and force of that doctrine, as though the Legislature never had spoken.

Again, the same court:

> The removal of such defence has no application in a case of this kind where evidence shows that the deceased assumed the risk by virtue of his contract of employment.

That, sir, is the decision of our court. It will be said that it does not go as far as the act, but it was an entering wedge. I am not a lawyer, but I know that cases are decided on precedent, that one judge draws it from another, and if one judge goes a little way another

judge may go a little way further. I know that if there is any force that is able even in the least to interfere with or to annul or to curtail the power of this act the court that allows a little of it will allow a greater and a still greater share, until perchance that act in itself will revert back to where it was before. But now what happened, — and again I give simply a side light. In regard to this the Legislature of 1911, and I read just a section of the 1911 law, because it may throw some light, said that

> In an action to recover damages for personal injuries sustained in the course of employment, it shall not be a defence that the employee or a fellow-workman was negligent, or that the employee had assumed the risk of the injury.

In addition to this case, the case of Johnson *v.* Cochrane Chemical Company, in the same volume, seems to set up the discredited fellow-workman idea. And there you have it. There you have it again in practically modified form. There you have another occasion of where the court has interfered, interfered with the will of the Legislature that meant so much to the women and children of this Commonwealth for their protection.

Oh, can you think that there is no unrest? I heard a man in this Convention deliver an address, and he said there was not any unrest that he had been able to find. Sir, there is unrest. I have here the testimony given before the Industrial Commission at Washington several years ago, and they divide that testimony, — I am not going to read this entire book, — they divide the testimony in this book given at that hearing. They called before that investigation probably scores and scores of lawyers and men in all walks of life, and out of that this much here (indicating) that I show is devoted to labor and liability. Men came from all walks of life before that commission. Here and there they picked out the best men they could find to come before that body and express to them their idea.

Judge Cowan of New York, who has occupied a high position, — has been Chief Justice of the Court of Appeals, if I remember right, — appeared before that commission and said that the issuance of injunctions and the interference with legislative power to his mind was the cause of industrial unrest. Judge Clark of North Carolina said the same thing. Let me show you. Ordinarily every man believes that where the courts are open men are entitled to a civil trial; yet in West Virginia, during a strike, martial law was declared. Courts were open and yet the martial law tried them and fined them, and courts held that trial by military authority was legal. And it went so far that Judge Cowan was obliged to make a public statement. He said in that statement if that was allowed to stand, the liberties of this country were in danger and absolutely had no standing.

Those are some of the things. While they have occurred in other States, and while I am willing to admit that perhaps in Massachusetts we have not had the same industrial unrest that we have elsewhere; while I am willing to admit that our courts perchance are better than theirs, — it is tinged with local pride, — I say to you that those decisions that I have named are detrimental and breed unrest because there is a feeling in the mind of every man, particularly those of the Anglo-Saxon race, that he has a right to trial by jury; that it is an inalienable right, and these decisions would deprive him of the right of trial by jury, would deprive him of one of the God-given

liberties for which his forefathers fought and for which he is willing to die if necessary to preserve those selfsame liberties. And that, sir, is the issue so far as the courts are concerned.

And now I will touch briefly upon injunctions, because they apply to this State. We have in this State wide sweeping decisions of the courts in regard to injunctions. Adopting the same course that was adopted under the Workmen's Compensation Act, the organized labor people of this Commonwealth and others came and asked for an anti-injunction law, and it was passed, passed by representatives of the people; and again we supposed that the voice of the people was supreme. But lo and behold, we find that again it was but an illusion. Again there stood that selfsame force which again would annul the voice of the people. Sometimes I wish that I was a lawyer and sometimes I am satisfied because I am not. Because if I were a lawyer perhaps I could discuss this question of injunctions more ably and go into the law better for your information from our standpoint. However, this anti-injunction law was passed, and then the Supreme Judicial Court, in a decision handed down, nullified and declared unconstitutional the anti-injunction Act of 1914. This act has been on the statute-books of Great Britain, — practically the same law, — for forty years. It was not drawn in Massachusetts but was the work of the best talent that the American Federation of Labor could procure.

The most striking thing about this decision is the complete reversal, — and here again is a different phase of it; here again will be shown when the courts on another occasion took position diametrically opposite to this, in which they reversed themselves, showing that they are not infallible and that it is far safer to rest it in the chosen representatives of the people and the people themselves than in a body of men responsible to no man other than to him who appointed them, and thereupon that responsibility practically ceases to exist. In December, 1892, when Dinah Worthington and others of Fall River struck for higher wages, were defeated and black-listed and went into court with a petition that the employers be restrained from interfering with their rights to earn a livelihood by maintaining a blacklist and that they be enjoined to withdraw and destroy all blacklists, the court replied (Worthington *v.* Waring, 157 Mass. 421, 423):

> The rights which the petitioners allege the defendants were violating —
>
> Now listen to this, — these rights to earn a livelihood, —
>
> are personal rights, as distinguished from rights of property.
>
> Their case was dismissed without injunction or other form of relief.

When, however, in Haverhill the Shoe Manufacturers' Association appealed to the court against the labor agents, the Supreme Judicial Court said:

> The right to labor and to its protection from unlawful interference is a constitutional as well as a common law right. (Cornellier *v.* Haverhill Shoe Manufacturers' Association, 221 Mass. 554, 550.)

The Supreme Judicial Court, in its last decision on this matter, — this is the case in which there arose the question of the constitutionality of the Anti-injunction Act of Massachusetts (Acts of 1914, c. 778), — quotes in 1916 several decisions supporting the following declaration:

> The right to work, therefore, is property. (Bogni *v.* Perotti, 224 Mass. 152, 155.)

In the Fall River case the court said the right to earn a livelihood is a personal right. Nearer our time it said this is a property right. [Reading]

> It is protected by the fourteenth amendment to the Constitution of the United States and by numerous guaranties of our Constitution. It is as much property as the more obvious forms of goods and merchandise, stocks and bonds.

And that, sir, was the decision of the Supreme Judicial Court of Massachusetts in reversing itself, putting labor in the class with bonds and stock and livestock. There is no difference, sir, between labor and the material of manufacture. It is raw material. It is the same under this decision, and in our industrial system it is in the same position as a bale of cotton, with one exception, — if business is not good a manufacturer can put a bale of cotton on the shelf and let it stay, but he cannot put a weaver on the shelf or he will starve and die. That individual has got to eat, and there is the human element that enters into it that differentiates between labor and property. And so we find the court in reversing itself has come to protect property in preference to the right of the working-class, and it quotes, — oh, you lawyers must laugh and smile to yourselves when it quotes the fourteenth amendment to protect property rights: oh, you men know as well as I that the fourteenth amendment never was intended to protect property rights. You men know that it was meant primarily to protect the Negro in the south after the war, that those men who voted for it had no idea of its being used for the protection of property, and not until 1882, where a railroad in one of the western States thought itself used unfairly, was it ever invoked to that end. No man ever had thought of it until some bright lawyer had an idea that he would get away with it, and he did get away with it and carried it on until it became the judge-made law of the land behind which every private interest has hidden and has plundered the people of this country right and left and has been protected.

Why, sir, out of fifty-one cases that have been brought to the Supreme Court of the United States under that amendment, only eleven of them, I think, relate to personal right and in only one of those was the plaintiff successful in his litigation. Oh, you men know that that amendment has been perverted to protect property rather than person, and these men get behind that fourteenth amendment and say: "Oh, this law is unconstitutional." And let me say now that whether you change your Constitution or not, the time is coming, my friends, when the things that are not constitutional now will be constitutional and the things that are constitutional now will be unconstitutional then. Because times change; we live in change, and the things that are not good must pass. There is a higher law, there is a higher voice, there is a last court of resort that is higher than any Supreme Court, higher than the quibblings of lawyers. It is the court of public opinion, and in that court of public opinion will be decided, as was decided the freedom of the black man, — will be decided the freedom from wage slavery of the white man. This I believe to be true. I may not live and you may not live to see the fruition of these ideas, but, my friends, they are coming. Is there a man here who will deny that Government is controlling more than ever before? Is there a man here but who will admit that you cannot regulate another man's business? It has been tried. You cannot do

it. A thing must be owned publicly or it must be owned privately; there is no middle ground. And which is it going to be? It is going to be, in my opinion, the view of the majority that in this great war for democracy, — why, sir, the people actually believe it; they are coming to believe it, — they are coming to believe that democracy means something more than casting the ballot, that democracy means a square chance in life, that democracy means shorter hours, better labor conditions, wages that are commensurate with the standard of living. That is what they mean by democracy now. And how are you going to get it? There is only one way, and that is for democracy to enter industry.

Now there are men here who do not believe it, but you at least want to pay attention perhaps not to my voice but to this phase of it. Democracy is going to enter industry, and those people who are employed in industry are going to have a larger voice in the government of that industry. They are going to have a larger share in its output, and if once started on its road it will continue until the workers control the entire industry in which they labor. And if they do that, my friends, you will have linked with your political arm of your government industrial solidarity. And I say now the only safeguard, the only safeguard that can accrue to our people, — and I want to stop long enough to say that I do not include simply the wage-earners in the working-class; every one who does anything of usefulness belongs to it, — the only thing that can accrue to the future prosperity of our land or the world is that industrial democracy, the people in industry, should be allowed to express themselves upon the political field. If we do not have this it will be either the bomb or the bullet, one or the other. I believe that in this country we can avoid that condition. But you never can avoid it if you allow any arm of your government that is irresponsive and unregulated to stand between the people and better conditions of livelihood. And the courts of this country do it, they are hedged in by precedent; they are hedged in by all the legal technicalities that a man can imagine. The average man who comes to the bench comes colored one way or the other; and if he be colored, if he be tinged with progressivism, let me say that there is not a force under God's heaven that is not used to keep him from that position. And while it may be true or untrue, I want to make this statement which cannot be denied, that the conservatives of this country never played into the hands of their opponents as they did when they opposed the appointment of Mr. Justice Brandeis to the Supreme Court. You cannot convince the great mass of people of this country but what the fundamental opposition to the confirmation of Mr. Justice Brandeis was the fact that he was known to be a progressive and consequently was unsafe and did not have a judicial atmosphere about him to sit upon the Supreme Bench of the United States. They may say: "It is not so;" and it may not be so, but you cannot convince the rank and file of the people that it was not so. You will find everywhere that where men tinged with progressivism come up that same opposition is against them; and why? It is because, as I said in the first place, the principle has been, the custom of law from its inception down to the present day, has been to protect property, and there to the courts property flies for protection, — and gets it.

The labor movement has no desire to take property away from a man, it has no desire to work an injustice; but, sir, it does hold this great principle, and it is the fundamental principle of democracy, that no man, — no man, — has a right to acquire property and use it to the ill of any other man. That is why we are finding fault, because no man has a right to take unto himself the products of other men's toil and by doing that work a hardship on any human being on the face of the earth. That, sir, to my mind is the science of government; that, sir, to my mind is the goal we are approaching. It will be hindered, it will be impeded, but, sir, the end is as sure and certain as that the sun will rise and that the sun will set. And this great war that is going on is going on because primarily, fundamentally, the peoples of the world do not have an opportunity to govern themselves. You can have legislators elected and you can have the initiative and referendum, but, sir, no more dangerous step ever was made, no greater blow ever was received by progressive legislation in this Commonwealth, than when there was put into the I. and R. the protection of our judicial power. Can you conceive of a free and enlightened government where there are three arms of our government, — the executive elected, the legislative elected, but the judiciary entirely free from any restraint whatever other than their own opinion? Oh, I believe it is a fundamental weakness in our Government. This government will survive. This government will survive even if that change has taken place. And I want to assure you again in closing that I have no fault to find with the judges. They are honorable men. But, sir, they are dealing with machinery that is antiquated and was not made to fit the present industrial conditions which have invaded the field of politics and which will invade it still more. I am pleading to-day for the enactment of this legislation that will give to the worker the right to organize and give to him that fundamental right to do collectively what he can do singly, to give to him the assurance that labor is not property, that labor is something that is holy in itself, and I trust this Convention will do it. But if this Convention does not do it the end is not yet. We will go on and go on till every barrier protecting private interests, — the interests of those men who would live by the sweat of another man's brow, — is removed and until every man, woman and child shall have an equal opportunity, and with that equal opportunity will come equal chance before the law and where no man will have incentive through material interest to injure the welfare and the well-being of his fellow-men, the State. I thank you. [Applause.]

Mr. Lowell of Newton: I have a great deal of sympathy with much that my brother in the first division, the gentleman from New Bedford (Mr. Harriman), has said, and I have had occasion to consider and be brought near the problems of labor a good deal in the last ten years. I was on the committee with the gentleman from Clinton (Mr. Saunders) which drew the Workmen's Compensation Act, and in that connection we saw a great deal of the laboring men, union labor and others. I was for a short time the chairman of the then newly created State Board of Labor and Industries, and in that connection saw a good deal of the union and non-union laboring men. And I am heartily in sympathy with many of the things which they seek to do. And I will say in parenthesis that they understand

what they want and get it very much better than the people who are supposed to be opposed to them, namely, the capitalists. They get legislation, much of which is good legislation in my mind. They get it more successfully than the people who are opposed to that legislation get things which they want. And why do they do it? I merely put this in because I think other people should draw a lesson from the union laboring men. They get it because they keep to their job. They keep all the time before themselves the possibility of getting legislation which they want, and they see to it that that always is before the minds of the people and of the Legislature. For that I say they deserve the laws that they have got, many of which, as I say, in my opinion are very good laws.

Now my brother has covered rather a wide field in his remarks and I shall try to narrow it down to the proposition which is before us. In the first place, I wish to deny an idea which I do not think the gentleman meant to give but which apparently ran through his remarks, and that is that unionism was illegal. Unionism has been legal in this State since 1842 at least. In that year Chief Justice Shaw, — a name not very much liked by our labor friends, — but Chief Justice Shaw held that a labor-union was legal and that people for joining a union, merely for that reason, could not be indicted for conspiracy. So that since 1842 at least labor-unions have been legal in this Commonwealth.

Mr. BROWN of Brockton: I suppose that you allude to the decision in which the judge laid down the dictum that what it was lawful for one to do it was not unlawful for them to gather together in union to do, and that a man could not be bound by the acts of a certain organization unless he himself participated in it? Is that the one you refer to?

Mr. LOWELL: I refer to the case of Commonwealth *v.* Hunt —

Mr. BROWN: Yes.

Mr. LOWELL: — which is one of the leading cases in this country, if not the leading one.

Mr. BROWN: Yes.

Mr. LOWELL: In support of union.

Mr. BROWN: I recognize it; that is it.

Mr. LOWELL: That has been the law here, I say, since 1842.

There has been a great deal of talk by the member from New Bedford, and a great deal of it I sympathize with, that courts always have not been just and fair to labor men; and they have not. There is no question of that, that in many States injunctions have been issued at times when they should not have been. I agree to that, that sometimes in this State, though less than in other States, certain injunctions have been issued and carried out in a way in which they should not have been. I agree to that. But that is not the proposition before us. In the first place, the resolution which we are talking about, No. 150, starts out with this:

> The labor of a human being or the right to labor is a personal right and not a property right or a commodity or an article of commerce.

With that declaration, I sympathize. I do not believe in it, I do not think it is true altogether, but I sympathize. I do not blame the gentleman from New Bedford from feeling himself, we will say, degraded

by being classed with a bale of cotton as a commodity, and I realize his idealism in trying to get something against that into our Constitution. But the fact, as I see it, — and we perhaps are going into metaphysics, which is not, I think, a very good excursion, but I will not take you very far, — the fact is that labor is in a certain sense a personal right; of course it is. I cannot be made to dig in my garden unless I want to, — as I do perhaps once a week. But labor is also in a sense property, because there is nothing made anywhere to which labor is not a part, and it is property also in this regard: The courts have drawn a distinction, and as it seems to me a very proper one, in cases where there is a contract to labor. If there is a contract to labor, then that contract to labor by the man who is going to do the labor is a property right, and the courts have made him fulfill that contract.

Mr. BROWN: Mr. President.

The PRESIDING OFFICER: Will the gentleman yield?

Mr. LOWELL: I yield, if he does not go too far into metaphysics.

Mr. BROWN: I thank you, sir. I certainly shall not, because I am going to narrow my remarks very closely. Please tell me this: True, it is your right to labor in that garden. You may elect not to labor in that garden, but when does that become property? At what point from the time you start to labor till the time you get through, — at what point is that property?

Mr. LOWELL: That leads us into metaphysics and I merely say that my feeling on the subject, which is worth as much or as little as the next man's, is that a man's right is personal until he agrees to give it to somebody else, and then perhaps at that moment of time it becomes a property right.

Mr. Brown addressed the chair.

Mr. LOWELL: I refuse to yield because we have here not a question of metaphysics, about which we can argue all day and like Milton's fallen angels be just as wise at the end of it or at the end of the century as we were when we started. We have here a practical question. The idealists in the labor movement, — and there are many of them, and very attractive gentlemen they are and many of their ideals are attractive, — the idealists in the labor movement have got this idea about slavery and about personal rights. The idea that the labor people are slaves is to my mind, — I cannot comprehend it, so that I will not try to battle with what I think is a shadow. But the idealists have this floating vision of the personal right of labor being put into the Constitution. It is merely a vision, in my mind, because it would not do any good. It would not change the law at all if it were put into the Constitution, but the practical man, — and the labor men, rank and file, and the leaders, are most of them nothing if not practical, — they know what they want and they know how to get it, and they do get it. The practical men have got something quite different from a millennium when they come to asking for their rights. Their idea is this, — it is in every one of these resolutions and that is what they are after, — their idea is that there shall be no control over their organizations by any one whatever, but that they shall be supreme. Now, is that right? At this time

of our civilization are we going to say that any class of men shall be without control over them? If we are, vote for these measures; if we are not, vote against them. That is all there is to it. As our frame of government is formed, an injunction is the only thing which can prevent violence if a strike occurs. Now it may be unfortunate that that is the fact. I do not say that the court is the ideal tribunal to have that matter under its control. Perhaps we could frame some better way. I helped in framing the Workmen's Compensation Act, which took from judge and jury the question of the value of a lost leg and gave it to a tribunal which we thought would give better results, and I think on the whole it has. Now possibly some different tribunal might be found. But it has not been found; and the fact is that as we are now, the only power which controls either the capital or labor in this matter is the power of the court through the issuing of an injunction.

I shall not defend the issue of injunctions. Some ridicule was brought in our committee, in the hearings of the joint committee, over the cumbrous language of the proceedings in equity. Well, they are cumbrous. Like everything else they are the result of history and they are quaint and antiquated, many of them. It is a fit subject for gentle ridicule, perhaps, and there are times when the courts, — though they are few in this Commonwealth, — there are times when the courts have gone too far. But will you say for that reason that the laboring class and capitalists shall be set apart that they may fight out their battles in the streets of Boston with no one to control them? That is practically what it amounts to if we pass this resolution.

The case referred to, of Bogni *v.* Perotti (224 Mass. 152), was the case in our Supreme Judicial Court which said that the bill passed in 1914 was unconstitutional, and the court referred to the fourteenth amendment of the Constitution of the United States which said that no State should deny the equal protection of the laws. And why was that decision made? It was made for this reason: That under it the labor men themselves were denied access to the courts which any one else except labor men could have. Now you are setting apart a class of labor men and saying: "You shall not go to court to protect your threatened interests, while every one else not within that class can go." The court said that clearly was depriving them of the equal protection guaranteed, — or equal protection; the phrase is "the equal protection of the laws." That is right.

In my opinion if we change the word "property", if we say "labor is not a property but is a personal right," we should not change that in the slightest. If we called it a personal right we still should be depriving the person of the equal protection of the law if we made a class of persons, depending on whether they labored with their hands or did not labor, and providing that for these the courts should have no power or no control. So that that is the question, — and I am not going to delay this Convention any further, — that is the simple question. When we have left aside the metaphysics of one part of it the practical question is simply this: Shall we make a class in the community which is absolutely, entirely above control by anybody else, which can do what they please without the slightest interference by anybody else? It seems to me that is absolutely

wrong. That is the clear issue. If you want it, vote for any of these measures; if you do not, vote against them. [Applause].

Mr. Donovan of Springfield: I just rise to ask a question of the gentleman who has just taken his seat, if he would answer the question, please.

Mr. Lowell: I shall be glad to answer it if I can.

Mr. Donovan: I should like to ask the gentleman if he wishes to convey the impression that to declare the right to labor a personal right would create classes, — that is, I suppose he means social classes, — in this State, and would he contend that if we hold that the right to labor is a property right it will eliminate classes or at least it would be a refusal to recognize the existence of classes?

Mr. Lowell: My friend from Springfield is a practical man. He does not want us to put the phrase "Labor is a personal right" into our Constitution and then stop there. What good would that do us? He wants us to put into the Constitution and as a necessary corollary to it, into our legislative proceedings, our laws, the fact that no injunction can be issued dealing with this personal right. That would make a privileged class just as much as when labor is called property. It makes no difference whether you call it what I think it is in this connection, property, or what I think it is not in this connection, personal right; it makes no difference what you call it. When you add on the fact that in dealing with that series of affairs "No injunction shall be issued," you thereby make a class distinction and make one class superior and supreme within the Commonwealth.

Mr. Hart of Cambridge: May I ask a question of the gentleman who just sat down? If the dreadful consequences which he portrays are to follow from the provisions before the Convention, how does it come that William H. Taft, ex-President of the United States, made himself the champion of an attempt to prevent the United States courts from exercising the right of injunction in labor trials?

Mr. Lowell: I cannot answer that question. What ex-President Taft did or did not think I have no means of knowing. But if ex-President Taft had been in Massachusetts with this law which was declared void before him, he could not have arrived, in my opinion, at any other decision than the one that was arrived at, for the very reason which I repeat, — apparently the gentleman wants me to repeat, — over and over. I repeat that when you make any class of the community not subject to the procedure of court when everyone else is, you are making a privileged class.

Mr. Brown of Brockton: The fundamental thesis underlying all these resolutions reported by the committee is this: Labor is not a commodity. Labor is not property. Now I want to confine my argument to that proposition. I ask the judgment of the Convention upon that. Why do we proceed to argue on deductions if we can come down to the original premise on which deductions are based? Do you say it is metaphysical? I answer: It is in the Constitution now. By the decision of the Massachusetts Supreme Judicial Court the Constitution now says labor is property. The Senate and House of Representatives of the United States, acting on a report of the Judiciary Committee, composed of some of the ablest lawyers in the United States, did not consider this question metaphysics. If I had time I would read you the distinguished names which say that this

declaration is fundamental and goes way to the base of human freedom. The Clayton Act distinctly declares as one of its provisions: "Labor is not a commodity," and it was recognized by the enemies of labor as it was recognized by the friends of labor as a new epoch in the cause of human freedom. Immediately following the passage of this act the labor men of Massachusetts, feeling that they would like to have Massachusetts to the front in the cause of human freedom as she was in days of anti-slavery, caused to be enacted a law in which that fundamental principle found expression, — "Labor is not property." The Supreme Judicial Court accepted the challenge and in the case to which the chairman of my committee (Mr. Lowell) has referred, laid down the principle, — "Labor is property." Thus you find the Constitution of Massachusetts, as interpreted by the Supreme Judicial Court of Massachusetts, in conflict with the supreme will of the United States as expressed in Congress after a long and very able debate upon this whole subject.

Is it of any consequence? Sometimes I think not. As I look about this chamber for men who were elected here by the use of funds of labor organization and the money of labor men and women, — they are absent. Why should I take any very large brunt for organized labor? I am not taking it for organized labor; I am going to take it for the cause of human freedom. [Applause].

Your precedents, so far as conspiracy is concerned, go back 600 years; it took us 600 years before we got clear of precedent. Labor was property in the Feudal times. It went with the soil; it was a part of it. Labor certainly was property in slavery times, because the labor power was personified in the individual. "How much for this good looking Negro? Look at his teeth; examine him; sound and kind, a good producer. How much?" He was auctioned on the block. Property? Of course he was property. But behind that machine, that human machine, was that everlasting human power, the Divine power. And the logic of events determined: "There is no property in human flesh."

May I say incidentally this: I want members to be interested. I want them to confute my argument by question at any time, prove to me that I am wrong. I ask the gentleman from Wellesley (Mr. Pillsbury), prove it not by the dictum of the court but by argument as should be done in any modern decision; not a mediæval dictum; but scientific reasoning. Show me when this labor power becomes property. I know when the product of that power becomes property, because I can put my finger on it. Man has a natural and inalienable right to acquire property, but he is not property. I can show you how by the exercise of that natural and inalienable right, including the right to apply God-given power where and when he will, that he acquires property. Here are two things, the natural right of the individual and the property which he has acquired. I can see that. Too often in the past and too often in the future shall we hear the labor men undertake to say: "You lawyers are not laborers." Will you help them by saying: Labor is property"? The chairman of my committee wants to help them, because if labor is property because labor produces something tangible then your labor as a lawyer is not property. You are not a property producer. Come, now, prove to me that you are. As a lawyer you use labor power; and I use it as

a printer. With this labor power I show a product as a result of its use; you can see the product. You lawyers use the same kind of power; you labor as we labor. You ministers use the same kind of power, — I hope purer than sometimes we get it. But when does that power become property? When does the labor power exercised by the minister become property? Show it to me.

Mr. WASHBURN of Middleborough: The gentleman from Brockton, accepting his challenge, has referred to the Clayton Act. That was a statute. How can a statutory declaration be deemed to be fundamental or organic if it conflicts with the Federal Constitution, as the Supreme Court of the United States has said that such a similar declaration does?

Mr. BROWN: May I ask before proceeding, and I think for the education of the Convention as well as myself, will the gentleman who last spoke please enlighten me further, when has the court said that?

Mr. WASHBURN: The Clayton Act itself has not been construed; that is so.

Mr. BROWN: Granted.

Mr. WASHBURN: But the Supreme Court of the United States, in several decisions to which I will call the gentleman's attention if he is not familiar with them, has held that labor, the right to labor, is a property and not a personal right.

Mr. BROWN: Of course it has! Of course it has! And you are face to face now with the question: "Is the court right?" The court said other things in the Dred Scott decision, and Abraham Lincoln says: "Obey the court, but change the court." And the court was changed, and the court does not now render any such decision.

You have a fundamental declaration here, a fundamental principle of human freedom. You are right at a parting of the ways, in my opinion. Are you going to continue the old feudal system that a man is property? He was under the old conditions. Again I return to the idea: When does your power as lawyers become property? I think that is the easiest way to prove as a fact that labor is or is not property. Is it in the brief? As property the brief would sell for old paper. I do not say that there is no property as the result of your labor. Why, you create property by using your labor power. I think you can see here as lawyers what I am struggling to make clear. Why not some lawyer, some college graduate, stand up and show me wherein I am wrong about this, metaphysics or otherwise? Is metaphysics too much for us? Is labor property or not? Is labor a commodity? The Clayton Act says it is not. It either is or is not. I do not care to go into injunctions, I do not care to abuse judges, I do not care to argue whether it is a power to be used by labor organizations or not. The question is: What is labor?

Mr. MERRIAM of Framingham: I wish to ask the delegate from Brockton if he does not fail in this matter to distinguish between the laborer and labor? I know of no decision in our land to-day by any court that the laborer is the property of any one. The decision by our court in Massachusetts is that the right to labor is the property of the laborer, and I think in that matter there is a broad distinction, and my friend from Brockton has failed to distinguish this fundamental proposition, that our court nowhere has asserted the right of prop-

erty to the laborer, but merely is upholding the right to labor as the property of the laborer himself.

Mr. BROWN: I would be glad to have the gentleman turn to that act and show me that the court says that it is a personal right that belongs to the individual himself, that that is a property right which is personal and belongs to him. Show it to me.

Mr. MERRIAM: That is the exact language in substance of Chief Justice Rugg in the case of Bogni *v.* Perotti, where, so far as I can recollect, he states that the right of a man to his labor is his property, and that is the essential meaning of the word. The word "property" means what is one's own, — that the right to labor is the laborer's own property, entitled to the protection of the law. And in view of that decision I wish to repeat, as I said before, that that opinion, it seems to me, is a bed-rock decision in the interest of the laboring man himself.

Mr. BROWN: As to whether it is or is not for the benefit of the laborer is not the question I wish to debate. As to what it is in substance according to the interpretation of the gentleman from Framingham, who above all others is fair and would not state anything contrary to what he sees it, that is his interpretation. That is the difficulty. Unfortunately, I do not read that as he does. As to the fact that the property is owned by the laborer, that goes without saying. In the name of heaven, to whom does the property belong if labor is property, if it does not belong to the man himself until he sells it? Of course, of course. But the question right here is: When does labor become property? It is fundamental. Again I appeal to the lawyers and I wish that the gentleman from Framingham would inform me just when his labor becomes property.

Mr. MERRIAM: I think the chairman of the Labor Committee (Mr. Lowell) has answered that question, — that the laborer himself makes his right to labor property when he agrees to give it in a fair contract by which he receives an equivalent, — usually an equivalent made such and recognized as such by his own free decision and act.

Mr. BROWN: Right there we approach the subject in a new phase. If it be as you say, and that man is property or he can be brought into court as property, you then commence your equity proceedings, and that is the only way that you get control over the individual, and you would lose that much control over his conditions the moment that he was not property. You bring him in under contract as property that he has sold himself. What else has he sold? Again we are back to the selfsame question. He has not sold except he sells all that he produces, but since no one can tell what is going to be the product of his labor, he gives his time. But the power behind that labor is what I am differentiating between and the commodity itself. I am trying to show that until you can recognize the fact that with that power is locked up the conscience and the right of an individual to determine upon his action, you no longer can approach the doctrine of human freedom, the right to move where he will and to have liberty so long as he does not interfere with the rights of others.

Says the gentleman, the chairman of my committee: "What labor is trying to do is to get rid of the courts, to get where courts cannot control it." Now that is impossible, for one of the fundamental rights which is guaranteed and which no one, not even a labor organization, has the

right to take from the individual is the right to work; such a declaration is in one resolution. The gentleman who is one of the committee, the gentleman from Wellesley (Mr. Pillsbury), says that that is an abstract statement. Nobody would deny it. I surely would not. He has a right to work wherever he may choose to work, and he has a right to the proceeds of his toil. But as it stands at the present moment the Massachusetts Legislature cannot pass an act which will be based on the Clayton Act declaration that "labor is not a commodity" and carry out its provisions, because the Supreme Judicial Court of Massachusetts has turned down just such an act, thereby denying to the Legislature the right to use, — if I may use that much familiar phrase that has been rolled over by the gentleman from Quincy (Mr. Adams) and the gentleman from New Bedford (Mr. Harriman), as learnedly and logically as by the gentleman from Wellesley, — the police power. The Legislature cannot use the police power or any other power based upon the proposition that labor is not a commodity, that labor is not property. I would say I may be wrong and everybody who has construed the Massachusetts acts may be wrong in saying that the Massachusetts decision that labor is property is final. The American Federation of Labor, immediately the Supreme Judicial Court had decided this case, summoned the ablest attorneys they could get; they got the greatest constitutional lawyer they could engage, only to find that in Massachusetts in some way, — I do not know how it was done, but they had lost the right of appeal. The language of the Clayton Act, if I remember, was not brought to the court. I want the chairman of my committee to be perfectly free to interrupt me, because I have no feeling that he did not allow me to do so. If I am wrong, tell me so, but if I understand it, this is the way it came before our committee: That while this case was being decided the judge made some sort of understanding or the lawyers did, so that when the American Federation came to Massachusetts and wanted to take the case up to the Supreme Judicial Court they could not do it. Under Massachusetts procedure in some way they were estopped from carrying it up. I cannot explain the fact, but it was explained to us by a member of our committee, Mr. Donovan of Lawrence, who was counsel at the time. He told us how far that played a part when the case was being considered by our Supreme Judicial Court.

Mr. LOWELL: I do not remember the circumstance, but I suppose it was not taken to the Supreme Judicial Court for one reason, that nobody tried to take it there.

Mr. BROWN: I would be glad to appeal to the knowledge of the gentleman from Wellesley, if he can help me in any connection whatever, — I do not know that he can, — but does he recall that it was stated before our committee at any time why that question was not taken up and if the Clayton Act was brought to the attention of the court, and why?

Mr. PILLSBURY of Wellesley: I can hardly answer a question the whole of which I am afraid I did not hear, but out of great personal respect for my friend from Brockton, I will give him this information. A section of the Clayton Act begins with this recital: "Human labor is not a commodity or an article of commerce." And that self-evident lie, one of the most preposterous things ever written into a statute even by the American Congress, which is a large claim, was put there

solely to introduce one of the most despicable pieces of demagogism ever written into the Federal statutes, in the exemption of all labor organizations and all agricultural organizations, — the working-man and the granger, — from the charge of criminal conspiracy under the Sherman Act, to which all other men and organizations are liable.

Mr. BROWN: So far as the gentleman has answered the question, — and I congratulate him that he is able to sit in this Convention and not hear me when I am speaking; it is a wonderful faculty and I have no doubt the rest of the Convention wish they had it.

Mr. PILLSBURY: You turned your back upon me.

Mr. BROWN: The gentleman tells me it is because my back is toward him. I am sorry that I am not built in a sphere, so that I could talk in every direction at once. I am fitted in every other way except my shape. [Laughter.] And still he does not enlighten us as to why the case did not go up to the Supreme Judicial Court, and I suppose it is because he did not hear me. But that he should characterize the Clayton Act in the way that he has, members of the Convention, I appeal to you, there must be something in it. No ordinary gnat crawling in this Convention would receive the attention of the gentleman from Wellesley. It is unworthy of his recognition. Only a great problem like this is worthy of the denunciation which he has placed upon it. Surely it must be very fundamental, there must be something wonderful which has taken place, when he thus does denounce it. I cannot use his words, but I will refer him, if he will do me the honor to read my own little effusion in minority report, document No. 342, to the words of George Frisbie Hoar. He has denounced George Frisbie Hoar, who differentiated between the labor power of the individual who was trying to better his conditions, and the capitalists who put their dollars together to make the largest profit they could get out of the whole people. Senator George Frisbie Hoar showed that very great difference between the property in its concrete form aggregated together to oppress the people, and labor, even though it is in a trust, gathered together not for profit of the whole but for the individual uplift. And he said that when people gathered together for that individual uplift they were engaged in work that touched very closely the foundation of this government.

Now I am not an alarmist. Do not take me for one, although sometimes I appear to be red hot. But who can fail to discover that this question which goes really to the base, is one that is going to work a great deal of mischief unless it is settled right? How can it be otherwise? Say to a man that he is property: "You are property, Mr. ex-Attorney-General from Wellesley; property you are." And I have less respect than I had for you before when I assumed that you were a great lawyer and that you were exercising one of the God-given gifts, that power that makes you a great lawyer, and that you are even a more useful laborer than I am, when I am using that power either as a printer or as a very poor editor. It is one and the selfsame power that you and I use. If I furnish to some daily an editorial which comes out of my power, I can convert it into money, then I can see property. But I am not property; labor is not property. The product of the labor is property, but not the individual. And you cannot get that individual into an equity court and treat him as you have treated him unless you call him property, and that

is the only fiction by which the courts have been able to do it, and I do not wonder that the gentleman stands up for the whole of the fiction, because if he loses the fiction that labor is property he loses the greatest weapon that the employers have had to compel labor to work whether they will or not. There is nothing to conceal here. Of course it affects the injunction; the Clayton Act having declared for exemption of labor organizations, there was the basis. Out of that grew the principle upon which exemption was based. If labor is not property it must be something other than property. That something was the power to produce property. As a power it is divine. If it is divine, — well, we have got metaphysics, of course, perhaps, but there we are. But you are dealing with a statement of fact, and it is fundamental; it is at the very base. To my mind, if there was nothing else in this Convention for labor to ask for but that, and it could get a declaration that labor is not property, it would get something.

First, we are asked to agree on something that is very plain: Is labor property or is it not? I say now that when you declare that labor is property you have drawn a broad line between the man who works with his hands and produces a product, whether he be an artisan skilled or whether he be a laborer in the trenches, and you furnish him with the very idea that he had got, that you lawyers and ministers and other men who are a very essential part of free government, as I see it, are parasites. A lawyer is a worker. Every man is an instrument. The humblest man who performs his work well is doing his work and his mission. And the highest is not above the decree that he is an instrument, merely a trustee for the higher power, that he may serve the brotherhood well. In so far as he does that, he does his duty, but in doing his duty I do not consider his power property. I may reiterate, because it is the fundamental thesis. I deny that your man would lose any rights in the courts if it was declared that labor is not a commodity. Why, the highest right that can be accorded is the man's natural right to work. Do you tell me that if you had it written in that labor is not property and a labor organization said to a man: "You can't work," the man has no redress? Do you say that equity cannot spread its arms and protect that man because you have declared that labor is not property? Certainly it can. So let us not be influenced by that argument. That is an appeal to prejudice. To say that this is too much to give to a man because he may misuse it is in the same class. It is to be given if it is right, it is to be withheld if it is wrong.

Mr. THELLER of New Bedford: In a friendly way I will ask the gentleman from Brockton a question on certain quoted passages in the case to which I think the gentleman is referring, Bogni *v.* Perotti [224 Mass. 152, 155]. The court after saying "That the right to work is property cannot be regarded longer an open question," says this:

> It was settled that the right to labor and to make contracts to work is a property right by Adair *v.* United States, 208 U. S. 161, 173–175, and Coppage *v.* Kansas, 236 U. S. 1, 10. Controversy on that subject before this court must be regarded as put at rest by these decisions. The right to work, therefore, is property. One cannot be deprived of it by simple mandate of the Legislature.

The court goes on to say, — I am omitting certain sentences:

> It is as much property as the more obvious forms of goods and merchandise, stocks and bonds. That it may be also a part of the liberty of the citizen does not affect

its character as property. It was said in Coppage *v.* Kansas, 236 U. S. 1, at page 14, "Included in the right of personal liberty and the right of personal property . . . partaking of the nature of each . . . is the right to make contracts for the acquisition of property. Chief among such contracts is that of personal employment, . . ."

Can it not be argued from those words of the Supreme Judicial Court that what the Supreme Judicial Court defined was, as it says in the opening sentence which I read, "the right to work" and the right to work is a right which is derived from personal liberty? In other words, labor is not property, but one of the essential rights which labor has, and which it may dispose of for a consideration, — place its own limitation upon that right or liberty and receive a price for it. So that it is not selling itself into slavery; it cannot do that anyway under certain statutes that we have, but it can dispose of part of its liberty; and does not the man who has property in the form of commodities dispose of his right to hold them to somebody else? When he owns a stock or a bond he has what the laborer has, an inchoate right, a paper right. The laborer has the right to liberty unabridged but in order to have civilization, to have contracts at all, must not the laborer have this right to labor, this right to work for a temporary period and dispose of it for some other commodity, money or some other property that he needs, and is not that what the Supreme Judicial Court meant, — not that labor personified was property, but a derivative right from the right of personal liberty, and that the right to labor, contractually, was property? [Applause.]

Mr. Brown: I am under great obligation to the gentleman for reading that into my remarks. It is an essential part of them. It affirms what I said, that the court said that it is property. You cannot differentiate an individual's right from the individual himself unless you go into my metaphysical field that there is a power behind the man. But I say I congratulate you, — instead of "Brother Delegates," I should say "Brother Stocks, Brother Bonds, Brother Railroads," — I greet you to-day. You are on a par. The Supreme Judicial Court says so. You are just as much property as stocks and bonds. Well, if you are, why cannot you be sold, — except, as you say [turning toward Mr. Theller], for that personal right? Where, Mr. Delegate who last questioned me, where, — I ask any lawyer in this Convention who is familiar with the case, — where does the court do anything but base its rulings on former decisions? Where does the court argue the case as I am trying to argue it here? Where does the court prove outside of its own dictum that labor is property? It says so. Well, that does not make it so. And then it meanders around trying to differentiate between the right to labor, personal liberty, and so forth, mixing up the accepted fact that a man may sell his services in the way of a contract and as the result of selling his services obtain property. Of course he can. But as it stands at the present moment, — you have read it, Mr. Delegate, — labor is property, like stocks and bonds. It certainly was property in the early days of Massachusetts when Massachusetts bought and sold its slaves. It was property when the slaves went up in the gallery of the Old North Church apart from everybody else. But there came a time when the courts had to set that one side, and they had to set it one side something on this line that labor power could not be property, but not enough to bring the principle out clearly. You

are in no different condition to-day so far as labor is concerned than it was in the days of slavery, so far as there is any legal decision. If we have gained any freedom of the right to unionize without being liable for conspiracy it has been, as I said before, only through a fight of 600 years. Conspiracy was alleged in the case of the King *v.* Tub women of London, because the tub women had united to get better wages, and if the tub women got better wages the King did not have so much to spend on his favorite women, so the King kicked, and he went back to Julius Cæsar for precedent on conspiracy that would throw the women down, and the King got his and all the others who have stood in a like position have got theirs. Finally the people organized to better their condition. Having organized to better their condition, along comes the Sherman Act with the idea of protecting the people; and who did they catch? The only people that they ever have caught in the net is labor and the only people they ever have fined who have paid the fine is labor. They have fined the great corporations but they never have paid it.

The debate was continued Friday, July 19.

Mr. Brown of Brockton: I had the floor of the Convention by your courtesy at the time we adjourned, and at the close of the session two of the attorneys who are members of the Convention asked me that I should continue. I also had a talk with the chairman of my committee (Mr. Lowell), whom I much like, and who kindly endeavored to show me the fallacy in my argument; and I heard him through and I felt that I must be biologized with my own belief and incapable of any new thought. As I meandered down to the depot thinking the matter over this thought came to me: There are men who think more of who says a thing than they do of what is said. Go get your authorities, present to the Convention some name other than yours or names other than you have presented to lift this matter out of any suggestion of metaphysics or any suggestion that it is not practical or any suggestion that it is trifling or any suggestion from the standpoint of the prejudices that it is done simply for the benefit of the labor organizations. Now I am going to address you for a few moments, so long as I find the Convention has any interest, along that line. And first let me say, as to what the gentleman from Wellesley (Mr. Pillsbury) and the gentleman from Middleborough (Mr. Washburn) have cited from the courts, I agree. I want to take out from what the gentleman from Wellesley has said, his adjectives, and let the fact stand, — that labor is property because the courts have said so. That is about what there is to it and I am not denouncing the courts.

Mr. Pillsbury of Wellesley: I hope my friend will pardon me, — I very much dislike to interrupt him, — for correcting him when he ascribes to me the statement which he puts into my mouth. What I should say if I had occasion to say anything about it, is that labor is property not because the courts have said so, but because it *is* so, as every man of common sense knows.

Mr. Brown: For a clear-cut, concise dictum delivered in support of a dogmatic assertion, the gentleman from Wellesley has no peer. He has simply said on his *ipse dixit*, "Labor is property; that is all there is about it; don't argue it any more; it is property." Now

whence comes that idea? Where did the gentleman get it? He gets it from the law. Where did the law get it? Well, let us go back. It got it from the time that all labor was performed by slaves. There is no doubt about it. That was your condition in feudal times and later. Well, if you continue to deal with that condition from the law standpoint, of course you will declare labor as property and of course in Massachusetts law it is property; although National law says it is not property. The court in Massachusetts, following precedents back into the dim and dusty past, amid the wrecks of the tyranny that darken the view, was justified in saying that labor was property. I go with you that far.

Now let us see what happened in consequence of the court's decision and through treating labor as property. It became necessary for the Congress of the United States to pass what is known as the Sherman Anti-Trust Act. While it was passing, this very question which I am discussing came up incidentally. I only refer to it; I may or may not have time to quote something of it. I am not going to now; I merely say that the idea then commenced to suggest itself as a reason why labor should be excepted from the operations of the Anti-Trust Act. Senator Hoar and others thought there was no necessity of putting it in the act, that the courts would not construe labor as being subject to the Anti-Trust Act.

Now as matters developed there was in existence what is known as the Hatters' organization. They had a label. You will see that in a number of hats you buy. You will not find it in the Stetson, but if you take a Lamson & Hubbard and turn the sweater down you will see the Hatters' label in that hat. Now the object of that, — and other organizations have also their own label, — is this: That the unions felt that they owned their purchasing power and they felt they could call on all labor organizations to use their purchasing power to support the labor that was employed under a label. In other words, you hire a union man when you buy a label hat. Acting along that line, organized for that purpose, they proceeded to carry on a war, — and that probably is the word, — by not buying the other hats. The manufacturers came into court to complain that it was a violation of the Sherman Act. It went to a decision of the court and, labor being construed as property, the decision came down that it was a violation of the Sherman Act. It was carried to its full conclusion. The labor-unions were fined and if there is any labor man sitting in this chamber with a card in his pocket, including myself, he paid either one, two or three contributions to that fund because every hatter was to lose his home unless a fund could be raised in the labor movement to save to those hatters their homes. Incident to that discussion you will remember that Gompers and Morrison and others came near going to jail, trying to defend the personal right to speak and write as they had done. They found their personal rights so befogged and entangled with this question of property that they made no progress. Thereupon the question became a political one and the sentiment in favor of some change was embodied in political platforms. Just let me refer one minute to the record:

The Democratic and Progressive platforms endorsed this principle. They cast 10,402,977 votes as against 3,484,974 votes for Mr. Taft, Mr. Taft maintaining the principle that labor was property and the other two parties taking the other side

of the contention. Naturally enough, it was felt that the votes of the people justified the taking of some action. Thereupon there was framed the administration measure known as House 15657, reported by Representative Clayton May 5, 1914.

Skipping a little bit:

The Judiciary Committee offered certain amendments, those which labor demanded and were necessary, and the matter came to the House, and on June 1 Chairman Webb for the Judiciary Committee . . .

May I pause to call your attention again to the fact that the Judiciary Committees of the Congress of the United States, both in the Senate and in the House, felt this matter of great importance, not speculative, mythical, whatever you please to call it, but something of transcendent importance —

Chairman Webb reported and the House in Committee of the Whole voted to adopt by 207 ayes and not a single dissenting vote. . . .

and also other amendments. Now let us see:

Now goes the matter to the Senate, and the debate in the Senate was of unusual interest [as you will see by looking at the record]. On September 1 Senator Cummins . . .

I pause long enough to number Senator Cummins as No. 1 in the list of "undesirable citizens" who have been instrumental in passing legislation which has called down upon them the vituperation of the gentleman from Wellesley.

Senator Cummins moved that in lieu of section 6 the following be inserted:
"That the labor of a human being is not a commodity or article of commerce."

Why was that there? How came that concept to be introduced? Why, plainly, without that, a proposition to exempt labor and agricultural associations is class legislation pure and simple. If you are going to exempt the labor organizations you must find a principle upon which it can be based, and there is the principle, — new, as it will be shown here very clearly, but accepted. Let me in passing call to your attention that this is vitally connected even with the progress of the war. The Labor Board and the Labor Policy Board, — there are two of them, — are both proceeding along the line of this concept.

The substitute was a combination of sections 7 and 18. On the next day, September 2, while Senator Cummins was discussing his proposed amendment, Senator Culberson, chairman of the Senate Judiciary Committee . . .

I pause long enough to put on the list No. 2 of the "undesirable citizens" who are subject to the anathemas of the gentleman from Wellesley for having given us this legislation. But while I am doing that I am willing that the gentleman from Wellesley should deny that either he is not or is, or they are not or they are, peers with him as lawyers, and this is a legal matter. [Reading]

Senator Culberson, chairman of the Senate Committee asked Senator Cummins if he would be satisfied with section 7 if the words "that the labor of a human being is not a commodity or article of commerce and" were inserted therein, and Senator Cummins replied that he had intended making that suggestion if his amendment was rejected. And then without a dissenting voice . . .

Now we have got the whole Senate of the United States in that category of "undesirable citizens" who have foisted upon us this legislation which has met with the anathema of the gentleman from

Wellesley. The entire Senate of the United States we have got in there and we are going to have more, gentlemen, before we get through here. [Reading]

. . . this amendment was accepted by the committee and adopted by the Senate as in Committee of the Whole without a dissenting vote. The bill was adopted by the Senate by a vote of 46 yeas to 16 nays. The bill went to conference. The conference committee made its report September 24 with the labor provisions practically unchanged. October 15, 1914, President Wilson signed the bill.

He did more. He wrote:

"Incidentally, justice has been done the laborer. The labor is no longer to be treated as if it was merely an inanimate object of commerce, disconnected with the fortunes and happinesss of a living human being, to be dealt with as an article of sale and barter. But that, great as it is, is hardly more than the natural and inevitable corollary of a law whose object" . . .

We are coming to the object of the law in the eyes of the President, a college professor, a Governor of a State, one capable of analysis, one capable of using the English language, and we are coming to what he says:

"whose object is individual freedom and initiative as against any kind of private domination."

There is my cause; there is what I plead. Before I go another step I want incidentally to bring this matter in. Before I have finished and while I am in my time, lest I forget it, I desire to move a substitute for the matter now pending, the resolution which is found in document No. 342, of which I have not an extra copy but which has been sent for and which I will send to the desk. At any time for the convenience of the President I will pause to have it stated, but I do not know that it is a necessity, if I may be excused for reading it.

The PRESIDING OFFICER: The Chair understands the gentleman to move substitution of No. 342 for the pending matter?

Mr. BROWN: Yes.

Mr. HORGAN of Boston: Here is an extra copy.

Mr. BROWN: By the kindness of the gentleman in the first division I have sent it up and ask that it be read.

The Secretary read as follows:

The labor of a human being shall not be deemed to be a commodity or article of commerce. And the Legislature shall not pass a law nor the courts construe any law of the Commonwealth contrary to this declaration.

Mr. PILLSBURY of Wellesley: I rose only to say that I presume my friend from Brockton intends to move his resolution as a substitute for the report of the committee, not for the other resolution.

The PRESIDING OFFICER: The Chair was in error. It should have been put in that way.

Mr. BROWN: If that is the correct parliamentary usage I will take it and renew my invitation I gave when opening, and will welcome a question any time, even in the middle of a sentence, if members will only ask questions to amplify or to controvert what I am saying. But to continue:

The National Democratic platform says: "We have lifted human labor from the category of commodities. We have protected the rights of the laborers against the unwarranted issue of injunctions."

If there are Democrats in the Convention as well as being members of the Convention, I claim their support of this resolution. It is connected with the wishes of the President. If this matter goes down as a measure to be voted upon by the people, it stands on its merits alone. If this matter does not go down to be voted on alone on its merits it will be the duty of labor to call upon the political parties to engraft it in their State platforms and in their National platform. It will involve also the position of the candidates on that declaration. We are once more in a position of alternatives much like that suggested by the gentleman from Waltham who showed what happened in respect to the overtime bill.

But let me read further, having spoken of the Democrats:

> The National Republican platform says: "We pledge the Republican party to the faithful enforcement of all Federal laws passed for the protection of labor."

All Republicans should be in line. As a result of those declarations, and the Congressional law "that labor is not a commodity," as has been said here, the Massachusetts Legislature passed an act exercising its power and declaring labor a personal and not a property right. The Supreme Judicial Court of Massachusetts met the challenge and again inserted in our Constitution as a fundamental concept: "Labor is property." The decision opens with that declaration; it runs through the whole line of what should be argument.

You cannot disassociate the labor of a human being from his personality. I sketch a picture. There is a man standing in front of a forge, his hands on the bellows. The fire burns. He reaches for a pair of tongs, he takes a piece of iron, he puts it in the fire. The forge burns, the iron goes on the anvil; click, clack, the hammer; he finishes; it drops; it is a nail.

Change it. A machine stands here; it is square; all iron; power is generated by friction; the machine is at work. Iron goes in at one end; out from the machine drops a nail.

Well, there is no question that the iron machine that is dropping out those nails is property. There is no question that its products are property. No. The machine can be sold as old iron with one value; it can be sold as a working machine with another value. Now, gentlemen, that is property. The iron machine is an inanimate object beyond doubt. You handle it, you feel it, you transfer it, you give title to it and it moves as a commodity. It is property beyond any question.

Drop that picture; let us go to the first picture. The nail that dropped was property. It was commodity. It can be passed from hand to hand. The machine, the man, the power that drives the man, — is it property? Can you pass the power, the machine from hand to hand? What do you mean by machine, you ask? Flesh and blood? Oh, no! The time comes when the flesh and blood is dormant; the end, you say, has come. But what has happened? Where is that property, please? That power that once made the machine a wealth producer is not a commodity. It should not be itemized as property.

Mr. Mitchell of New Bedford: I have two reasons or excuses for injecting myself into this debate. In the first place, I have a conception of the importance of this subject, and in the second place, I happen to be a member of one of the committees from which this

report has come. In the debate of yesterday there seemed to be a good deal of confusion. It was largely a confusion of definitions. There seemed to be some confusion of ideas as to what the right of labor is and as to what labor is under the law. I think this confusion grows somewhat out of the hesitancy of the mind to grasp the conception of intangible property. The argument of my friend who sits just in front of me (Mr. Brown of Brockton) illustrates this. The delegate developed the argument that if the labor of a man or the right of labor possessed by a man is property, then the man behind the labor must be property also.

Now of course we know that that does not follow at all. We know that under our law there can be no such thing as property in a human being. At the risk of being rather elementary I want to illustrate what I mean. I will suppose, — it is a rather violent supposition, — that I have a thousand dollars in gold; and I will come to another very easy supposition, — that I lend that thousand dollars in gold to my friend from Brockton who sits in front of me. Now I have not that thousand dollars in gold, that is, I have not that tangible property any longer. But my friend has given me his note for a thousand dollars; I have an intangible property that is the equivalent of the tangible property that I parted with; and that intangible property is just as good as the tangible property, because back of that promise of my friend to pay me the thousand dollars are his high character and his undoubted financial responsibility.

Now that promise of my friend to pay me the thousand dollars is just as much property as the money that I loaned him, just as valuable to me.

Or to vary the illustration, suppose that I agree to perform services for my friend; suppose I agree to serve him for a stated period at a particular compensation. Now what does he get? Why, he gets my promise, he gets my contract to perform service for him. That contract is property; that belongs to him and he can invoke all the process of the courts to compel me either to perform my contract or take the consequences.

Now that is the kind of property that labor is, — that the right to labor is. It is intangible property, but it is just as much property and just as truly property as the tangible things that we see about us.

Again there is another matter, of mere definition perhaps, that is rather confusing, and that is the expression which we have heard over and over again that labor is or is not a commodity or an article of commerce. Perhaps I may be bold enough to differ on that matter with the distinguished chairman of my committee (Mr. Pillsbury). Without being very careful I should hesitate to differ with him on anything except a mere matter of definition. The labor of a human being, in a sense, is a personal matter. Contracts for personal services are not assignable. That is, in the case where I have agreed to render service to my friend he has no right to go and assign that contract to somebody else and make me serve somebody else. He cannot sell my agreement just as he would a horse or a house or something tangible, because the law says that contracts for personal services are not assignable. Labor rights cannot be bartered or bought and sold upon the market and therefore in a very real sense the right to labor is not a commodity or article of commerce.

Mr. BROWN: I am paying close attention and I agree to all that the gentleman has said, but will he address himself to the language of a lawyer who is defining that, — and I am quoting the definition of Senator Cummins. Here is his definition:

> The value of the legislation is found in the recognition of the everlasting difference between the conscious capacity of man to accomplish something and the inanimate commodity which his intelligent activity creates.

Let me read it again. [Reading the same sentence.]

Mr. MITCHELL: I am sorry that I cannot spend any time in attempting to fathom these ideas of Senator Cummins. I am trying to show in a practical way the legal and proper conception of the right to labor.

Mr. BROWN: I should like to ask the gentleman this: Accepting, as I suppose he does, that that definition is the present legal definition, would it be possible for the people to give a new definition, and how would he regard that new definition if there was one such as this? What is his idea of the difference between the two?

Mr. MITCHELL: We cannot change the nature of a thing by giving it a definition.

Mr. BROWN: Correct.

Mr. MITCHELL: Now, what is the right to labor under our law? In the first place, it is a personal right. Insofar as that proposition is concerned it is not necessary that the proposals before us should be acted upon at all. The law firmly holds that the right to labor is a personal right. My colleague from New Bedford (Mr. Theller) very clearly said last night that the right to labor is embraced in the fundamental right to life, liberty and property. No man can deny me the right to labor. But the right to labor is something else under our law. In order that I may be clear and that you may understand just what I mean when I speak about the right to labor, in this connection I will say that I mean two things, perhaps more accurately two aspects of the same thing. In the first place, there is the right to enter into employment, there is the right to seek labor, the right to seek to be employed. That, without any question, is now a property right. In the next place, there is the right which grows out of a contract of labor after it has been entered into. That, without any question, is and always has been in our Commonwealth a property right.

The statement has been made in this debate that in the case of Worthington *v.* Waring, 157 Mass. 421, it was decided that labor was not a property right. Now no such thing was decided in that case, as of course any lawyer in the Convention knows. The question which arose in the case of Worthington *v.* Waring was whether persons seeking to find labor, seeking to be employed, could be placed lawfully upon a black-list, or rather, whether, having been placed upon a black-list by certain manufacturers, a court of equity, by injunction, would give them any protection.

The court did hold in that case that the right which was attacked was a personal and not a property right, and refused to grant the injunction. But that case did not decide broadly, that the right to labor was not a property right. In order that I may be clear in this matter I will quote, from the opinion of Chief Justice Field,

the sentence in which he states the issue before the court. He says:

> It does not appear by the petition that any of the petitioners had existing contracts for labor with which the defendant interfered.

That is, it was not a case where contracts of labor were interfered with, it was not a case where any right of labor growing out of a contract of employment was attacked. It never has been decided in this Commonwealth that, in this sense, the right of labor is not property. It always has been held to be property. But even to the limited extent to which the case of Worthington *v.* Waring went, I think that from the time the decision was rendered its authority was doubted. In a case following that, some years later, the case of Burnham *v.* Dowd, Mr. Justice DeCourcy in the course of his opinion expressed doubt as to the correctness of the rule laid down in Worthington *v.* Waring. In the later case of Fairbanks *v.* McDonald, 219 Mass., Mr. Justice Sheldon still more strongly expressed doubt as to the authority of Worthington *v.* Waring. In the still later case of Cornellier *v.* Haverhill Shoe Manufacturers Association, 221 Mass., in which the opinion again was written by Mr. Justice DeCourcy, the decision in Worthington *v.* Waring was squarely overruled. I will take the liberty to read a sentence or two from the opinion by Mr. Justice DeCourcy in that case. He says:

> It is true that in Worthington *v.* Waring, 157 Mass. 421, this Court refused to enjoin the defendants from making use of a black-list, stating that the rights alleged to be violated were personal and not property rights, and that there were no approved precedents in equity for issuing an injunction against the grievance there complained of. In the light of more recent decisions of the court recognizing that the right to labor and to its protection from unlawful interference is a constitutional as well as a common law right, there appears to be no sound reason why it should not be adequately protected under our present broad equity powers. As intimated in Burnham *v.* Dowd, the case of Worthington *v.* Waring cannot well be reconciled with our later decisions. It must be considered as no longer binding as an authority for the doctrine that equity will afford no injunctive relief against an unlawful combination to black-list.

So that the doctrine laid down in Worthington *v.* Waring, even to the very limited extent to which that went, has been shattered entirely by the recent decisions of the court. But the point I want to make, and to make most strongly, is that it never has been decided in this Commonwealth that the right to labor in the sense implied in the resolution before us is not property; it always has been held to be property.

Mr. DONOVAN of Springfield: I should like to ask the speaker if he distinguishes between the right to labor and the labor power.

Mr. MITCHELL: I do not know what the gentleman means by the labor power.

Mr. DONOVAN: I would say that in the amendment offered under my name, — I believe it is document No. 120, — is stated (we seek to have it embodied in the Constitution) the declaration that the labor power of the human being is not a commodity or article of commerce. I do not know whether we are talking upon that, whether that document No. 120 is included in the discussion that we now are conducting; if so, it is not, according to my point of view, a dis-

cussion as to the right to labor, but rather the labor power of a human being.

Mr. BROWN of Brockton: I should like to call the attention of the gentleman (Mr. Mitchell) to the statement of Attorney-General Wickersham, — if he cares for it I will quote it, — but he was opposed to this; but when it was passed he made this statement, — I have it here, and when it was made: That if this declaration, which you say you accept, (that the right to labor is not an article of commerce) had been in the law, there never would have been a hatters' case, there never could have been a conviction. So then, see the importance, the hundreds of men losing their homes, millions of men and women paying their money in order to compensate somebody who was injured, because there was not in the fundamental law as a concept the very principle which the gentleman himself says, — why, he argues against the idea that we shall place it now in the Constitution. I trust myself broadly on Mr. Wickersham's statement, that if that had been in the law they would not have decided the case as they did. That is what I should like to hear from you upon.

Mr. MITCHELL: I cannot debate the proposition with Mr. Wickersham because I do not know what he said and the matter is not before me. I am trying to discuss the proposition that appears here and as it is before this Convention.

Mr. MORTON of Fall River: I wish to state for the benefit of my friend from New Bedford (Mr. Mitchell) that I think he has stated with entire correctness the tendency of the decisions of the Supreme Judicial Court of Massachusetts and the results which they finally reached.

Mr. MITCHELL: It has been established clearly, as I have said, that in this Commonwealth, and in all our States for that matter, the right to labor is clearly a property right. I do not propose to develop the legal argument any further. I do propose now, without going into any legal niceties, to discuss this proposition, upon the broad ground of human right. It is perfectly proper, if our labor friends wish to do so, to criticize any decision of any of our courts. In the nature of things the courts must decide what the law is, and when they have decided what the law is we must bow to their decision. But in a democracy every citizen has a perfect right to say that the court proceeded upon a wrong theory or that a certain decision ought not to have been rendered. That is a right that is undoubted. Of course in court it is always a perfect answer to say that the matter has been so decided, but here it is not an answer. I realize that in this Convention, in a body dealing, as we are dealing, with the fundamental things that lie back of all decisions, we have the right to consider any question from the standpoint of fundamental right. I freely admit that even judicial decisions at times must justify themselves before a body like this. But I submit, that if any line of decisions ever was justified, if any line of decisions ever was declared justly and properly, it is the line of decisions by our courts determining the right to labor to be in law a property right.

Let me discuss this in a practical way, just a few moments. There is a certain form of property that we all have in common, and that is our labor. Every one of us owns that species of property. There are other species of property that are owned by some men in this

Convention; some men have stocks and bonds, some men own mills or factories, but there are some of us who have practically no property except our labor.

Now, it would be a monstrous thing to say to the man who has only his labor: "The other man who has the other sort of property, the man who owns the mill, the man who owns the bonds, shall be perfectly protected in his right of property, he may invoke all the processes of the courts to protect him, but you, who are dependent on your labor alone, must stand defenceless when you are attacked; you cannot invoke the process of the courts, because your right to labor is not property." It seems to me that that not only would be fundamentally wrong but it practically would destroy the opportunity for human advancement. We have no right to say to the people of the Commonwealth that the man who depends on his labor must go to some union or some association, in order to secure such precarious protection as he may, that he cannot come into the courts of the Commonwealth and demand his rights there, and that he cannot have the same privilege that the owner of the other species of property has of asking that the courts fully protect him, — that he cannot come into the courts that are the property of all the people.

We cannot afford to say that sort of thing to the man who is dependent upon his labor for his support. Or, to put the matter in another form, we boast that this is a land of opportunity. We boast that any man, no matter how poor he may be, if he have only his hands and his brain, may aspire to anything in the gift of the Commonwealth. In spite of what some social reformers have said, that is substantially the case. The very fact that some of us are here to-day is proof that this opportunity does exist.

Now, you take the man who must depend upon his labor for his advancement. His labor is the only asset that he has; and what is it that makes his labor available? It is his right to contract with reference to it, to enter into enforceable contracts of employment. It is the right to use his labor as an individual for his own advancement. It is the right, if you please, to have his right to labor declared in law to be what it is by nature and in fact, — a property right. Without that his rights are gone and his only means of advancement are destroyed.

On this floor, and in the hearings before the committee, it has been asserted that the conditions of the worker in industrial life to-day are the same as were the conditions of the slave in slavery times, or the serf in certain countries in the recent past. That analogy is wholly false. I venture to say that if these proposals were incorporated in our Constitution we would be taking a long step toward putting back the laboring man, the man who must depend upon his labor, into the same condition as was held by the slave or the serf years ago.

What is it that makes the man a slave, or what is it that made a man a serf? Simply the fact that his labor belongs to somebody else, that he has no property right in his own labor. Since his labor belongs to somebody else, it can be bartered away or traded without his consent. He has no power of advancement, no means of making his way in the world. This slavery, this serfdom, would be the certain result, it seems to me, of the adoption of these proposals that are

before us. I cannot believe that our labor friends intend by this series of resolutions to destroy the very basis of labor value, and yet I have a very firm conviction that the adoption of them would lead to that precise result. [Applause].

Mr. HARRIMAN of New Bedford: I move to amend the report of the committee by the substitution of document No. 150.

Mr. BROWN of Brockton: I rise to a point of order.

The PRESIDING OFFICER: The gentleman will state his point of order.

Mr. BROWN: That is the converse of the proposition, as I understand it, which is now before us. No. 150 was before us before there was a move to substitute the other. Now the motion is, as I understand it, to resubstitute what was pending. Am I in error?

The PRESIDING OFFICER: The Chair rules the point of order is well taken. The only question before the Convention is: Shall the resolution be rejected? If rejection is negatived, then the document is substituted. Then would come in order the motion of Mr. Brown of Brockton.

Mr. WALKER of Brookline: Do I understand the Chair to rule that while the question of rejection is before the Convention an amendment to the proposition cannot be made?

The PRESIDING OFFICER: The ruling which the Chair made was that No. 150, the amendment as offered by Mr. Harriman of New Bedford, was not in order, because that was in the subject-matter under consideration, but that according to the procedure of the Convention the amendment of the gentleman from Brockton was in order, — the substitution of his amendment.

Mr. PILLSBURY of Wellesley: I am reluctant to enter this debate, especially under the heat of the day, — though I feel none of the heat which the discussion seems to have generated in other quarters, — because I am satisfied that my friend from Newton (Mr. Lowell), at the head of the joint committee which reported against these resolutions, ably aided as he has been by my friend from New Bedford (Mr. Mitchell) and others, has said enough to sustain the report; but I am called upon by an invitation so direct and pressing by my friend from Brockton (Mr. Brown), for whom I have the sincerest respect as a man, however misguided, who believes every word he says, that it would be almost discourteous to refuse it. Indeed, I feel a personal obligation, arising out of my personal affection for him, to make him a wiser man if I cannot make him a better, though it is not entirely clear to me that I am justified in taking the time of the Convention for that purpose. [Laughter.]

I think, however, that one or two things remain to be said which may help to clarify the discussion, somewhat confused by the introduction of what my friend from Newton (Mr. Lowell) called metaphysics, but which might be called by a name by no means so polite.

I will begin by a plain statement of the reason why the palpable untruth that the labor of a human being is not a commodity has become so dear to my friend from Brockton (Mr. Brown) and to organized labor in general. That lies at the very center of this labor injunction controversy, and to that extent my friend from Brockton has found out the crucial point, but he is trying to stand upon a falsity and a fallacy, and that is the difficulty with his position.

Organized labor, rightly or wrongly, wishes to control the labor situation and the labor market, and to be in a position to dictate terms, not only to all employers, but to all independent labor, — to every man who works and does not see fit to join the union. If they can get rid of the injunction they can do it, for the injunction is the only effective legal remedy against the unlawful methods or proceedings which often accompany the strikes. It is no remedy to sue three or four hundred strikers individually for civil damages. That will not keep the mill running nor compensate the owner for his loss. Still less is it a remedy to indict them for riot or conspiracy. The only real remedy is the injunction, which says to them, when they are conducting an unlawful enterprise or a lawful enterprise by unlawful means, — "Stop." But the injunction can be issued only to protect property rights. Accordingly, in order to get rid of it they take the somewhat devious course of asking us to declare in the Constitution that labor is not property and the right to labor not a property right. It would be much more direct, more simple, more intelligible, more honest, to write into the Constitution, plainly, that no injunction shall issue in an industrial dispute.

Mr. Brown of Brockton addressed the Chair.

Mr. PILLSBURY: Pardon me; my friend from Brockton can make a much better speech than I can, but I prefer to have him make it under his own name [laughter], and if the Convention had observed the rule of one speech at a time it would have saved months which have been wasted here in idle interruptions.

Instead of going at it by the plain and direct way of saying in the Constitution that no injunction shall issue in labor disputes, which at least involves no falsity or fallacy, they are trying to get at it by writing into the Constitution that labor, or the right to labor, is not property and shall not be so regarded; because, if they can do that, they have paralyzed the injunction, which can issue only in defence of property or property rights.

What was said by my friend from New Bedford (Mr. Mitchell) this morning about the Worthington case has superseded what I might have said on that point and made any further reference to that case unnecessary. But we heard yesterday another voice from New Bedford, in quite a different key, from my friend who usually sits in this division (Mr. Harriman), who spent the best part of an hour in repeating the old familiar diatribe and denunciation of the courts. It was unworthy of him and I am sorry that he felt called upon to do it. He was betrayed into it, I assume, by the warmth of his feelings, and to some extent, undoubtedly, by misstatements which he takes as truths, but I think it ought to be answered. Instead of attempting to answer it myself, I have at hand a more effective answer from the gentleman who has been so distinguished as counsel for the labor organizations that his activity in this direction, as I suppose, has made him twice a candidate for Governor, who recently on a public occasion said this:

> As one who has had some experience in the trial of so-called labor cases, I hope I may be pardoned if I venture to say a personal word of commendation and approval of the Supreme Court of Massachusetts. In this practically new and unexplored field our Supreme Court has probably penetrated further than any other civilized

tribunal. In many of its decisions it has been most liberal in its views and in its treatment of the workman. In many cases it has laid down rules of law that have been and will be invaluable to organized labor. It has been most painstaking and careful, eminently fair, and absolutely fearless. It has lived up to the highest, noblest, and the best traditions of Massachusetts, and no greater praise can be accorded to it.

I read this public statement of Mr. Mansfield, the counsel of the labor-unions, not more to confute my friend from New Bedford (Mr. Harriman), who said to the Convention yesterday exactly the contrary, than because I think the man who made it is entitled to the credit of it. He expressed the same view before the joint committee, where he represented organized labor, and he has never taken, in the Bogni case nor any other, the absurd position that labor is not property nor the right to labor a property right. On the contrary, in the Bogni case, the latest of the important cases, in which our court held the Act of 1914 unconstitutional, the case which projected this whole controversy into this Convention, he printed into his brief the express concession that the rule is no longer to be questioned, that it is idle to say that the right to labor is not a property right or that labor is not property; and I will leave my friend from New Bedford in this division to fight out his controversy with his own counsel.

These things would not have tempted me into this debate, — nothing but my friend from Brockton (Mr. Brown) and some of his assertions could have done it. I was born of a race of abolitionists and inherited the despised and persecuted Negro as part of my filial charge, and whenever and wherever I hear slavery mentioned I instinctively prick up my ears; and I am bound to say that when I first heard my excellent friend from Brockton suggest the fantastic idea that the doctrine that labor and the right to labor is property makes the working-man a slave, and imposes upon him a system of slavery, I wept and cast ashes on my head that so good a man can be the victim of so absurd a delusion.

Mr. Brown of Brockton: You misquote me, sir.

Mr. Pillsbury: What is the truth about it? That is the best way of settling the question, if we all know what it is, — and in this case we do, every one of us. The truth is that human labor probably is bought and sold more and oftener than any other commodity in the world; for every one of us who works, and in this country that includes pretty much everybody, from the shoeblack up to the most powerful captain of industry or the President of the United States himself, sells his labor for a price, and every one of us, whether working or not, buys the labor of others and cannot get along without it.

The legal truth about the right to labor is this: It is a personal right, beyond question, and as such is part of the constitutional right to liberty which the courts will protect, and apart from this injunction controversy it makes no difference in the end whether you call it by one name or another. But it is also a property right, because labor can be and is every day sold for money. It is the only property that a vast number of our people possess, and these resolutions would take away their only effective legal remedy for the defence of it.

My friend from Brockton invites me to argue this with him. Why, some things are incapable of argument. I would as soon think of arguing that water is wet as of arguing that labor or the right to labor is property. He invites me to prove it. "Prove it," he says,

"Prove it to me." Some minds are impervious to proof. [Laughter.] It is common knowledge that you cannot convince the victim of a delusion that it is not so. To him the delusion is the only real thing there is. But sometimes illustration may do what argument cannot do, and if my friend from Brockton will permit me, let me remind him of two or three common facts of his daily existence, for I doubt whether he has ever held up the mirror to himself. I learned yesterday with great interest that he is a printer. I presume that when he works at that vocation he works for wages, and I hope they are liberal. Does he really feel and believe, when he puts the pay envelope in his pocket that he is a slave? Who ever knew a slave to be paid for his labor? Where does he go at night when he gets through with his day's work? Does he go, like Bryant's slave in Thanatopsis, "scourged to his dungeon," or does he go, with his money rattling in his pocket, whithersoever he pleases, "sustained and soothed by an unfaltering trust" that there will be more money in his pocket to-morrow? [Laughter and applause.]

But it is worse than this. If my friend is a slave, he is also a slave-trader and a slave-driver, for he cannot get along without the help of his fellow-citizens any more than the rest of us can, and he does not try to. He goes to the cordwainer to make or mend his shoes; to the tailor to make or mend his coat; to the barber [laughter, apropos of Mr. Brown's luxuriant growth of white hair and beard] to dress his hair. [Laughter and applause.] I agree with him that such a crown of glory ought never to be profaned by the shears, and if I had the privilege of wearing it I should no more think of asking a barber to cut it than my friend from ward 5 in the third division would think of asking a barber to cut his. [Laughter and applause. A reference to Mr. Lomasney of Boston, who is quite bald.] Now, whenever and so often as my friend goes to the shoemaker, or the tailor, or the barber, if his own theory be correct, he is imposing slavery on them, and trafficking, if not in their bodies, in their very souls. And when I reflect that he does these enormities every day of his life, I shudder to think that so good a man in his impulses can be so depraved in his conduct. [Laughter.]

If I try to chase this absurdity any further I shall become absurd myself. Let me deal with the subject a moment more soberly. The fancied analogy with slavery is a false analogy, into which my friend from Brockton is self-betrayed by the warmth of his emotions. The crucial fact at the bottom of the whole labor controversy is that organized labor demands the privilege of breaking its contracts at pleasure, so that it may dominate and dictate terms to every employer and to every independent laborer; and because it cannot be allowed to do this, and because the injunction is in the way of it, we have this outcry against the injunction and the talk about slavery. If you want to talk about slavery there is better material and nearer at hand. It is universally admitted that the government has a complete power of control over the service of its citizens for the purposes of its maintenance and defence. We are at this moment watching the operation of this power on the most tremendous scale. Labor in peace, and military service in war, are both alike service, no more and no less. Men often volunteer for the service of war, as they have always volunteered for the service of labor; yet no one would

contend that the volunteer soldier shall have the right to desert the colors whenever he finds that he can better his condition, or that he is a slave because he cannot. The defence of the country, the government itself, would break down under such a doctrine.

The service of labor is no less essential to the maintenance of government than the service of war. Since organized society, or therefore government, cannot exist without a vast amount of work done, if voluntary labor sufficient for the purpose does not offer, compulsory labor must be sought and found; and compulsory labor for the maintenance of society and of government is no more slavery, nor would be if we should have to come to it, than compulsory service in war.

Mr. Moriarty of Boston addressed the Chair.

Mr. Pillsbury: I ask my friend not to interrupt me. I shall be through in a moment, and then if I can say anything to his satisfaction it will give me pleasure.

All this is no truer to-day than it has always been, but I presume it has never occurred to my friend from Brockton to doubt that he lives under a government "as free as the lot of humanity will permit," nor really to regard himself as a slave. All society, all government, must rest, does rest, on the obligation of every member of it to do his part toward maintaining it; and this involves, as one of its primary elements, the obligation to perform private contracts, fairly made, no less than the social duties demanded by the government as of right. It would be as easy to undermine society and overthrow government by general disregard of private obligations in time of peace as by refusal of military service in time of war, and no government could permanently survive if it permitted either the one or the other. So far from slavery, this principle lies at the very foundation of liberty and free institutions; and these are some of the reasons why the talk about the principle of slavery being involved in the sale of labor or enforcement of labor contracts is nothing but the product of a disordered fancy, and why the remedy of injunction in industrial disputes must remain until we find a better, which in my opinion must ultimately be found in an arbitral tribunal, operating equally upon employers and employed and having power to enforce its awards, thus securing the industrial peace which is always and everywhere essential to the public welfare and the stability of our institutions, and in Massachusetts is essential to the very existence of a vast proportion of our population, which depends upon industrial peace for its daily bread. [Applause.]

Mr. Hart of Cambridge: It is a dangerous thing for a tyro to follow a master jurist, an adept in constitutional law, of vast experience in the exposition and application of the law. I cannot speak as a lawyer, but as a student of laws there is something to be said upon this subject which perhaps has not yet come to your attention.

We are dealing with two intertwined questions, — first, the question of the right of injunction; second, the question of property in labor, — as though they were accidentally connected. Now, the truth is that these propositions now before this Convention involve several different principles, or lack of principles, with regard to labor. The first is the question of the right of the courts to lay injunctions upon

persons in order to restrain criminal acts. That involves the doctrine of property, since ordinary equity proceedings do not extend to the acts of persons, nor invoke criminal proceeding. The judge makes them criminal by asserting that labor, or at least the right to labor, is a commodity, a property, which may be made subject to injunction.

Then follows a point which hardly has been touched upon here. How is the injunction to be carried out? Why, by contempt proceedings, involving trials without jury, and without the ordinary application of judicial procedure; and these three matters are inextricably connected. The proposition before us is to restrict, — not (as you will observe if you examine the text), to prohibit the use of injunction in labor matters, but to restrict it; and we have been assured upon this floor that any attempt at restriction meant nothing more or less than the turning over of the control of the Commonwealth to the labor men, who thus would become the only men in the Commonwealth who could act without restriction; while all the rest of us were to be prostrated at their feet.

I was amazed that this doctrine should be put forth in this Convention, a doctrine practically that there are here on this floor, and throughout the Commonwealth, two different classes of men whose interests are vitally opposed, one of which is endeavoring to destroy and humiliate the other. I do not believe that to be the case. I do not believe it, in the first place, because the labor men of this Commonwealth not only have an organization, but they have rights. It seems to me extraordinary that the people of Massachusetts, through their representatives in this Convention, are so slow to recognize what we actually admit every day of our lives, namely, the number and the power at the ballot through their organizations, of the laboring men of the country. Nor do we all realize that the laborers, acting under the advice, direction or threat of their leaders, have in general taken a stand which makes the war possible.

If the laboring men of Massachusetts, and of the other States, were in a frame of mind to tumble down the rights of other people, they have an opportunity now; if they were in that frame of mind what an opportunity to decline to support the government in its effort to protect this Commonwealth, and every Commonwealth of the Nation, and to make them perpetual! The laboring men within the United States would have the power to stop the war, so far as the United States is concerned, if they chose to exercise it. They do not choose to exercise it. They stand up to their guns as well as the other Americans. They furnish their quota of men in the trenches; they have done their part; and we assume that they, like their brethren, will continue to do their part to the end of the story.

If the principle of no injunction in labor disputes is so dangerous it is very curious that in 1897 a voice was raised against it; which doubtless you will instantly decide must have been the voice of a labor agitator.

> In answer [says this voice] to the argument urged in favor of the injunction, — that the injunction is a swifter and speedier mode of dealing or a short cut to the desired end, that it avoids delay and uncertainty incident to a jury trial, occasions less expense, and insures speedier punishment, — is opposed the conclusion that, conceding these pleas to be true, they would justify mob action.

Whose voice is that? A labor leader's? No. It is the voice of a United States Circuit Court of Appeals, in a case reported in 83 Federal Reporter 912.

Again, a like voice arose in 1901, to the effect that if the relief sought is to be granted by a process of injunction, this

> Means that a judge, — one individual, — sitting in equity, must hear the evidence, determine the facts, convict the defendant and then, by fine and imprisonment, enforce his judgment; that no jury shall intervene, and that no barrier and no safeguard shall stand between the will of the judge and the liberty of the defendants.

What are these words? They are the decision of a majority of a Kentucky court, in a case reported in 78 Southwestern Reporter 482.

There may be differences of opinion upon this subject, but I protest against the attempt to put down members of this Convention, whatever their attitude toward this question, upon the ground that the pending proposition is unthinkable, — that it is an offence against society, to argue that the present use of the labor injunction is contrary to the ordinary rights of the individual, and an improper method of judicial procedure.

We talk about this as if there always had been injunctions in labor disputes. So far as I can discover, the first case in which that point was distinctly raised was the case of Springfield Spinning Company *v.* Riley, in 1868, in which the offence was truly dreadful, I will admit. It appears that the labor men had issued placards which requested all "well-wishers of the Union not to trouble or cause annoyance to the Springfield Spinning Company by knocking at the door of their offices, until the disputes between them and certain workmen should be finally terminated." This frightful threat, this destruction of the foundations of the Commonwealth, the court held to be a publication involving intimidation, for which injunction was the appropriate remedy.

Again, in 1888, in the case of Sherry *v.* Perkins, in Massachusetts, it appeared that a banner had been displayed bearing the awful words: "Lasters are requested to keep away from P. P. Sherry's. Per order, L. P. V." Those incendiary words could be met only by an injunction, and an injunction was issued.

The field of injunction has been widened by two Federal acts, namely, the Interstate Commerce Act of 1887, which has introduced to some minds the idea that working-men who are in any way connected with interstate commerce may be restrained by injunction when others may not, and the Sherman Anti-Trust Act of 1890, in which conspiracies in restraint of trade were prohibited. Under those acts there have been some additional cases, and the practice has grown wider and wider. As I tried to call to the attention of the Convention yesterday, a very curious fact is that in 1893 Judge William H. Taft of Ohio issued an injunction against a strike inaugurated by P. M. Arthur, for many years the head of the Brotherhood of Locomotive Engineers. That same Mr. Taft it was who subsequently was elected President in 1908, under the Republican platform which protested against the use of injunction as then applied, presumably by the United States courts. President Taft was so much interested that he followed it up with a message in which he urged legislation. Legislation was introduced into Congress but was not passed at that time. But in 1912 the Supreme Court of the United

States issued certain rules, under the law by which they incorporated the main principle for which President Taft had contended, namely, that injunction should not issue without notice nor except in extremity, so to speak. Those principles, so alarming to some members of this Convention, were introduced into the rules of the Supreme Court, which govern the proceedings of the court. That is to say, these disturbers of the Commonwealth, these destroyers of our peace, appear to have found their way into Congress, into the White House, and even into the Supreme Court.

It is true that in a number of recent cases the Supreme Court has upheld labor injunctions, sometimes in the State courts but more commonly in the lower Federal courts, particularly the twin cases of the Hitchman Coal & Coke Company *v.* Mitchell and the case of Eagle Glass & Manufacturing Company *v.* Rowe, both of them in the year 1918. It is true also that in those great decisions there were dissenters, and if I had to choose between agreeing with the majority of the Supreme Court and agreeing with Justice Holmes, Justice Clarke and Justice Brandeis as to what is the law and what is a proper application of law to the conditions of labor in this country, I always shall be glad to be ranged with the dissenters. Those judges, in one case three and in another case two, dissented flatly against the whole principle and against the whole idea that it could be used to prevent laboring men from carrying out a policy of common action. The majority of the court, and many lower judges, think otherwise. Some even claim that picketing was intimidation and therefore ought to be stopped by injunction.

This whole question of injunction, this whole question of the relations of labor, is farther complicated with the issue which has just been discussed so inclusively by the gentleman from Wellesley (Mr. Pillsbury).

Mr. WASHBURN of Middleborough: I dislike to interrupt my friend, but is the word "injunction" mentioned in any resolution now before the Convention for discussion?

Mr. HART: I am very happy to say that since it is impossible, as I have been trying to argue, to disassociate the question of injunction from the question of property in labor, I was just about to come to that particular point. That is, the usual reason why an injunction is laid is that the court first frames in its mind the conception that labor, or the right to labor if you choose, is a commodity. Now, the difficulty with that doctrine is the very serious one that there appears to be no method of specific performance of labor contracts that does not involve involuntary servitude, except, of course, in the army and in the navy and with seamen upon the sea. That marine status of absolute subjection to the rule of the captain and the officers for the time being, has been very much diminished by the act which just before the war was passed by Congress and presumably now applies to our merchant shipping, although it has been somewhat disturbed by war.

The difficulty is a very simple one. I am a workman. I have nothing but my hands. I engage to work for a man, we will say for a year, and by and by I do not like the job and I quit. What can he do to me? Why, that is a contract. If he has lost money by me he can sue me. Well, plainly the suit of an employer against

an employee or a number of employees is a very unsafe recourse! And when you have won, what do you get? Suppose you are awarded your damages, you cannot induce the man to come back to your shop. Then what is the next step? There is only one logical next step, under the theory of labor injunctions; that is, if you are to enforce the contract you must enforce it specifically, you must put me at a lathe and say: "Here, turn that piece of iron"; you must give me a shovel and say: "Dig a hole in the ground, and if you don't there is a black snake whip". Where does that method carry you? We all know that forced labor is impossible. That is to say, the doctrine of specific performance of labor contracts, which lies at the bottom of this whole theory of injunction, is a doctrine which is incompatible with the ordinary principles of freedom. We hear something now about the conscription of labor in other matters; the Federal government may call upon civilians, as it has called upon men of military age subject to military service, for services which the government will assign and which the government will enforce. If we come to that, we shall be under not only a very different labor system from any with which we are acquainted, we shall have an entirely different social system, we shall have a changed governmental system.

Mr. Brown of Brockton addressed the Chair.

Mr. HART: The gentleman from Brockton (Mr. Brown) is entirely able to defend himself on any question. I beg pardon. The gentleman from Brockton (Mr. Brown) has been very courteous to me. I yield with pleasure.

Mr. BROWN: Of course I am interested in the gentleman's argument, but I want to have it clear right here. And what does labor say to the government? Conscript us, if you will, for the benefit of the whole, but — when you conscript us for the benefit of the individual!

Mr. HART: Part of what the gentleman has said I was about to say, and the rest of it certainly was said with great ability.

The point here is the very simple one, that if you are going to conscript labor you have got to accept it as a war measure, an extreme measure. When it comes to the issue of defending the United States, when it comes to the question of setting up this country as an implacable opponent of tyranny and oppression in the world, when it comes to the necessity of our maintaining a position which will make free government possible, I am as willing as any man in this Convention, as any labor man in this Convention, to give way upon that question and for this time. But, let not our abnormal war conditions be made an argument for a legal system under which in times of peace this remedy, this drastic and this unreasonable remedy, may be applied.

The truth is that the doctrine of injunction never would have been heard of but for the increase in labor power, the weight of the labor-unions, the disputes about the closed shop and the open shop. In a way the injunction is looked upon as one of the defences of the propertied class. What is the propertied class? We all belong to both classes. All the members of this Convention certainly are hard working. Some of them could live without labor, and even without their salaries as members, but their means and their incomes are not

the real question here. The real question is that we are all members of the same Commonwealth and on the same terms. As a matter of fact, we have recognized property, we have had to recognize the existence of great numbers of laborers, we recognize labor organizations, though employers in general have striven against it for a century. We have recognized labor-unions on a small scale and on a large scale as we have recognized capitalistic combinations. We even have made agreements with labor-unions which practically are part of the laws of the United States and actually a part of its administration. It is futile, it is idle, for us to sit here and to try to set apart the labor men, who are our brethren, who work in their shops as we work in our offices, who are as much interested in this Commonwealth as any of us, who have children to educate and to put out in the world. It seems to me, speaking mildly, an affront to say that those men are seeking through this amendment, whatever its legal defects, to assert a power of domination over the rest of the community. I am just as willing to put the future of myself and my children in an electorate which includes the working-men of this country as in any select part of a different electorate which could be designated by this Convention or in any other way. [Applause.]

Mr. CHANDLER of Somerville: As the arguments in this case have been very exhaustive, I move the previous question.

Mr. RICHARDSON of Newton: I desire to ask a question of the gentleman from Cambridge (Mr. Hart) who has just taken his seat. I should like to have the gentleman assume a case where he was involved in some very important legal controversy, and where he had given a retainer to a distinguished attorney for the purpose of retaining him upon his side of the case, and it later transpires that the distinguished attorney, being false to his trust, has gone over to the other side of the case and proposes to appear for the gentleman's opponents. Whether or not the gentleman from Cambridge (Mr. Hart) would think a legal system was to be commended which would prevent the gentleman from Cambridge (Mr. Hart) from using the power of the injunction to restrain the legal gentleman in question from so violating his trust?

Mr. HART: In a case like that put before us I should think the first thing to do was politely to kick the attorney out of your own service, try to get an honest man, and if there were no honest attorneys, why, then I think I would have to go out of business. But of course the gentleman from Newton (Mr. Richardson) knows as well as I do that the case he is putting is a case that is exceedingly liable to happen under the present judicial system of Massachusetts; and the remedy of asking a court to enjoin a lawyer from appearing upon the other side, and submitting him to contempt proceedings if he did appear or if he gave any advice to my opponents, appears to me to be one of the slenderest, feeblest and most futile remedies that I could undertake. I would rather put my money in some other hole.

Mr. DONOVAN of Springfield: Speaking on the previous question, I hold that this is a very important matter. I have come to the conclusion that the other resolutions before this body, or that are to follow, would be involved in case we disposed of this question, which is resolution No. 150. I understand if we disposed of this without further consideration that it also would dispose of the others which

follow. I have intended to speak upon this matter, and have given some thought to this subject, and I hope that the previous question, if it does involve the other resolutions, will not be considered at this time.

Mr. Lowell of Newton: I hope the main question will not be ordered now. This is a matter on which, as the Convention knows, I have very strong opinions, but there are many gentlemen here, some of whom agree with me and some of whom do not agree with me, who wish to talk upon it. It seems to me that they should be given the opportunity. It seems to me perfectly true, as the gentleman (Mr. Donovan of Springfield) has just said, that the two following resolutions are practically this same thing, and we might as well discuss it all on this one rather than having two more bites at the cherry.

Mr. Dennis D. Driscoll of Boston: I hope the delegates to the Convention at this time will reject the previous question. It will become more serious after the Convention adjourns if the previous question is adopted, more serious in other conventions as well as here, and will give the opportunity to some people to criticize the action of the Convention on an important question they wish to discuss. If I had my way, I should like to hear a great discussion of the injunction question by the best lawyers in this Commonwealth. Some of the actions of the past Legislature, and the decisions of the courts by their injunctions upon some of us individual members, show to us the exact dealing with the representatives of the court in handling this question. I am under the opinion that the delegates in this Convention should be able to produce a quorum, so that they will give to the people who are interested in this question, to the gentlemen who oppose them, the right to discuss this question, which, whether they claim we are mistaken or correct, is in the interest of the wage-earner, no matter whether the word "slavery" is used in argument, and many times by many people, instead of wage-class. We all are free American citizens, and a discussion of this question, on which we often condemn the political propaganda of the political parties and the gaggery of free speech, will give an opportunity to those who are in favor and those who are opposed, so that we may become educated on this important question by defeating the motion for the previous question to-day.

Mr. Adams of Quincy: I should wish, if the gentleman would consent so far, that his motion for the previous question be withdrawn. This is a very important issue, and I for one am very much in need of instruction upon it, and I should very much like to hear these gentlemen who have prepared themselves and whose opinions are of value to me, allowed to speak. I do not believe that there is any question likely to come before this Convention which is more important to more members than this question. I myself for many years have been reading decisions of the courts, and I have been listening to the discussion, and my mind still is undecided. I very much hope that discussion will be allowed to proceed.

Mr. Chandler of Somerville: I feel assured in a way that debate on these other questions will come at this time. I therefore will ask to withdraw the motion.

Mr. Donovan of Springfield: I have listened with a great deal of

interest, particularly to the speech of the gentleman in this division (Mr. Pillsbury), who spoke so ably in behalf of labor as a property right. I admit that the criticism made by the gentleman from Wellesley (Mr. Pillsbury) probably to some extent was well founded, when he says that labor organizations by indirect methods have sought to bring about a result that might better have been stated frankly and have been sought as an amendment to the Constitution in the way in which he put it, "to limit the issue of injunctions in labor disputes." That may be true. It may be true because of the fact that labor organizations in matters of law, like the rest of us, have sought the advice of lawyers. We have recognized that in the words of Mr. Dooley "the lawyers make the laws and the flaws in the laws," and we have sought their assistance. Of course it was natural that a lawyer would approach this question from the standpoint of his profession and would seek to obtain his end by indirect means. I will confess that we have had to make use of lawyers. As Elbert Hubbard once said, "lawyers are men whom we hire to protect us from lawyers," and we have had to so protect ourselves. The result is that they have introduced the measure in this possibly indirect way to achieve results by taking the method of removing from the jurisdiction of the courts of equity the issuing of injunctions in labor disputes.

I have based my remarks almost wholly upon the report of the committee as printed. It seemed to me that they no doubt would have given careful consideration to this document, and therefore that I might make it a basis for criticism from the point of view which I hold. I notice that they say in discussing resolution No. 146: "Resolution 146 seeks to incorporate into the Constitution the undisputed abstraction that the right to labor and enjoy its fruits is inherent in the individual. Of course it is, but to declare this in the Constitution would add nothing to the rights of any citizen." It appeared to me that if the right to labor as embodied in resolution No. 146 was merely an abstraction, undisputed but an abstraction, that it was inconsistent with their attitude or their definition of the right to labor when referring to the other resolutions, Nos. 219, 220, and the others. There they say: "To declare that labor is not property or a property right is a very different matter. The right to labor is plainly property." To me it would seem that if the right to labor was an abstraction when treated under resolution No. 146 it was still an abstraction and not a concrete property right.

Mr. ADAMS of Quincy: Might I ask the gentleman to explain to me, as I do not clearly understand, if he wishes me, for example, to understand that he wishes to impress upon us that labor is to be considered as a property right, that is to say, as much a property right as any tangible thing which we have, or whether he looks upon it as a privilege. I would ask him whether the issue does not really lie there. Labor consists, as I understand it, in the idea. It is an abstraction, as observed. That is to say, a man's labor is worth only what the idea that he has of it makes it worth, his wish to labor, in other words. Is it, therefore, other than a privilege? Is it a tangible thing at all?

Mr. DONOVAN of Springfield: The phrase, the right to labor, is rather confusing to me. As I have studied labor economics we deal with labor power rather than the right to labor. To me the right

to labor seems to be an abstraction, from the fact that there is no guaranteed opportunity to labor. If there is such an opportunity, then the right to labor would cease to be merely an undisputed abstraction; but as held legally it seems that they use the phrase, "right to labor," as synonymous with labor power. The resolution which I introduced dealt with labor power, that "the labor power of a human being is not a commodity or an article of commerce."

According to my understanding of working-class economics, commodities came into being with the production of things for sale rather than for use. A commodity must have exchange value. The workingman, or the man who produces labor power for his own personal enjoyment and not for sale, probably would not come under the category of a possessor of a property right according to the gentleman from Wellesley (Mr. Pillsbury), but the working-man who eats, who sleeps, who gets shelter, who builds up his body for the purpose of selling the power that is generated within him in return for payment, I suppose according to that definition would be the seller of a commodity. His labor power then would be a commodity subject to the law of supply and demand in the labor market, just the same as any other kind of commodity, shoes, clothing or any other sort of thing, and in a way similar to the conditions that prevailed under chattel slavery. In other words, he would be a wage-slave. He would be selling for wages, which he exchanges for food, clothing and shelter, his labor power. The slave, on the other hand, was bought and sold and gave his labor power for food, clothing and shelter. He did not sell it piecemeal. He belonged to the man who owned him. Now what we are seeking to bring about is a constitutional declaration which will say in the law of our Commonwealth that the labor power of the human being belongs to himself, is a part of himself, and that he cannot be restrained by judicial decisions in disposing of or withholding that labor power.

The report of the committee makes the statement that the only effective means that thousands of working-men outside of labor organizations have of enforcing their right to labor is through the courts; and I deny that the courts enforce that right to labor. I deny that the courts provide any opportunity for the working-man inside or outside of labor organizations to labor. That was what was sought in resolution No. 146, introduced by the gentleman from Brockton (Mr. Brown). It sought to provide in the Constitution that the right of a human being to labor and to enjoy its fruits should not be denied. Now, if that was embodied in the Constitution it would hold, it would seem to me, that the State should provide some way for the exercise of that right. Under the present circumstances the courts do not enforce the right to labor. It may be there is some legal haze about this which I have not been able to penetrate, but to my understanding this statement is entirely wrong, it is entirely contrary to fact, and courts do not enforce the right of the worker to labor.

To show that the gentlemen in their report are looking at this, not from the standpoint of the working-men outside of labor organizations, but rather from the standpoint of the employer, they say in their report that the reason why the law holds labor to be property is because it is capable of hire for reward, evidently looking at it from the standpoint of him who hires for reward. The employer hires labor for

the purpose of making profit, for the purpose of exploiting; in other words, getting from the worker more than he gives in return. The working-man gets in payment for his labor power wages, and he produces commodities. The difference between the price of the commodities which he produces and the wages which he gets as a workman goes to the employers; that is, the class of employers who take rent, interest and profit. There is where the difference goes between the wages paid to the workman and the price of the commodity which his labor produces.

Our contention, then, is based upon the fact that the working-man who sells his labor power to the employer sells himself with it; and if it is interpreted that the labor power of the working-man is a commodity, then he himself, who is inseparable from it, is also a commodity. I do not see how we can rule differently. And this is the position taken, not by the idealistic labor men, as the gentleman in the third division (Mr. Lowell) yesterday, speaking for the committee said; this is the position of what is called the more conservative trade-unions. The I. W. W. take the same position that the gentleman from Wellesley in this division (Mr. Pillsbury) takes. [Laughter.] They hold that the labor power of a human being is a commodity, that it is bought and sold upon the market subject to the laws of competition, and their object then, the whole fundamental basis of their position, of their philosophy, is this: To organize the workers as sellers of labor power, control that very essential commodity, and by controlling that most necessary commodity control the world and control all government. It is the logical position of the syndicalist, who says that only by the control of labor power can labor win the full value of its toil, — only through its control of its labor power. It is those who believe in parliamentary government, who believe in orderly procedure, who take the position that I am advocating here to-day, those who believe that while the courts exist as they do, the supreme courts, all the actions of society will tend to be subject to their interpretation, and therefore we seek to remove from the field of their jurisdiction such matters as this, which would tend to put us as workers in the position of confining ourselves to the philosophy of the syndicalist. We then would be forced to hold that while labor power was capable, as a commodity, like any other commodity, of being monopolized, then through the power of that monopoly we would be able to force any conditions that we saw fit to impose.

I have been surprised to find such unanimity of opinion between what we call the extreme radicals of the labor movement and the gentleman from Wellesley (Mr. Pillsbury). I would ask him a question as to an unemployed working-man. For instance, I have in mind a few years ago a multitude of unemployed workers, or who wished to be workers, unemployed at the time, who assembled on Boston Common and then marched upon the State House. I believe the gentleman from Waltham in this division (Mr. Luce) at that time was Lieutenant-Governor, and he met the committee of the workmen on the steps of the State House. They were seeking employment. They were seeking an opportunity to labor. According to the report of the committee they had a valuable property right in their possession at that time. They had labor power for sale, but they could not find any one to buy it. The gentleman from Waltham (Mr. Luce),

then Lieutenant-Governor, was in no position to purchase this abundance of wealth that lay before him. They had "valuable property rights" according to the gentleman from Wellesley (Mr. Pillsbury), in this division, but I contend that those property rights (?) which they were supposed to possess were not valuable. They could not dispose of them, and therefore they were useless. They were without exchange value. They were not a commodity. Now, would he claim that it is only the man who is working who has a commodity for sale, who is selling a commodity? Are the vast number of unemployed without any commodity for sale? They are without an opportunity to sell it. Is it property in one case, in the case of the employed workman, and is it not property in the case of the unemployed workman?

Mr. WASHBURN of Middleborough. Does the gentleman contend that any piece of tangible property, we will say, which cannot find a market, is not therefore property tested by his definition?

Mr. DONOVAN of Springfield: I am contending against the report of the committee, which says to the multitude of our citizens outside the labor organizations the right to labor is the most valuable property right they possess. I am considering this as a valuable property right. To them it was of no value. It had no exchange value. Value, as I understand it, deals with the exchangeability of goods, not the use of goods. Now, to them that right to labor was not valuable, because it was not exchangeable. Therefore I hold that it is not a valuable property right.

Mr. WASHBURN of Middleborough: I dislike to disturb the gentleman, but I should very much like to have an answer to my question.

Mr. DONOVAN of Springfield: Would the gentleman repeat the question, please?

Mr. WASHBURN of Middleborough: The gentleman is arguing in effect that an unemployed laborer, unable for the time being to dispose of his right to labor, does not possess any property right. I ask him, testing out his definition, whether, assuming that any given piece of tangible property could not find a market, he would say that it therefore was not property.

Mr. DONOVAN of Springfield: I would not say that. I would not contend so in the case of tangible property. I have denied the tangibility of labor power divorced from the person who possesses it.

Another matter has occurred to me. We know that the workingmen and others have been conscripted into the military forces of our country. It seems to me that the conscription of those men was a conscription of them as human beings, not as possessors of property.

Mr. ADAMS of Quincy: If the gentleman will permit me to ask him a question, — I already have asked him a question and I should like to repeat it, because I am not getting precisely the information which I had hoped to get. I asked him to give me some information on exactly what the labor people meant or wanted when they demanded a right to labor as distinguished from a capacity to labor, or something of that kind. Now they object to having the courts hold that the right to labor is property, and what I want to get through my mind clearly, absolutely clearly, is what the labor party object to in having the courts hold that right to be property. As I understand, the right to labor is no use as long as it remains in a

man's mind; if it is undisclosed, its value only depends on finding a purchaser. As I understand it, the great Socialists, so to speak, always have insisted that it was the duty of the State to provide labor for its citizens if they wanted it. That is to say, first of all, the man demanding labor had to have the desire, the wish in his own mind, to be employed. In the second place, he had to communicate it to somebody representing the State, and then the State had to furnish him with occupation. Now I can understand in that situation why or how labor actually should be a commodity. It is a salable commodity for which the State provides a purchaser. That is all perfectly logical and the result follows that the citizen is bound to supply the labor if he is asked to by the State. That is the correlative duty and all that is logical enough. But I do not understand that that is the position of the labor party. I do not understand that the labor party says: "Here, we are willing to provide the labor and now the State must furnish us employment." I do not understand that it is the question they raise, and I simply ask to be enlightened as to what the position is.

Mr. DONOVAN of Springfield: First, to answer the question of the gentleman from Quincy, I will say that the position that he has outlined is not the position of the organized labor movement of America, and in this proposition that is now before us we are not considering the right to work which was embodied in a resolution introduced, I believe, by the gentleman from Brockton. The right to work, if such an amendment was embodied in the Constitution, would imply, it seems to me, the necessity on the part of the State to provide employment. The matter that I am speaking upon now, which deals with injunctions in labor disputes, we might, as the committee apparently did, consider with the others all together. They rejected proposition No. 146 and they took up the other propositions in their order. But the question that I am debating at present is upon the ruling of the committee sustaining their report, — a decision that has been made by the Supreme Court in certain cases, the Massachusetts Supreme Judicial Court in particular, — that labor is property. I am trying to show that labor is not property in fact; at least, I am trying in my argument to prove that labor did not become recognized as property until it was so interpreted by the courts. Am I answering your question?

Mr. ADAMS: Partially.

Mr. DONOVAN: Well, if it is necessary to give a yes or no answer to that question, whether the organized labor movement is seeking to bring about a State guarantee of employment, I will say that at this time it is not seeking any such consummation. Does that answer it?

Mr. ADAMS: That answers it. The only other question is, how, then, does their claim go further than claiming a privilege, — a privilege to offer their labor?

Mr. DONOVAN: The matter in which the organized labor movement of America is particularly interested at this time, and the proposition now before this Convention, is on the interpretation of the courts of this State that the labor power of a human being is a commodity or is property. We are trying to show that in fact it is not property, and we are trying to show that up to the time that the courts ruled that labor was property, it was not considered property.

We have in our language the word proletariat. It is a word that has been given rather a widespread definition amongst the people by the uprising in Russia. Now the definition of proletariat is a propertyless workman, — a wage-earner, a man with no property.

Now it is evident that at this time, — and this definition is in all the later dictionaries, — there is such a group of people considered, men who have no property. Under the decision of our courts that labor is property it would seem that the dictionaries are entirely wrong in their definition, that there are "no such animals." It would seem that according to the courts there are none such in our country. Now it is recognized in other countries that there is such a class as a propertyless class, a class of wage-earners, those who sell their labor power from day to day and depend upon the sale of their labor power for their food, clothing and shelter.

Mr. WHITTIER of Winthrop: I should like to understand this thing if possible. I am paying a good deal of attention to it. Take a person, for instance, who starts out with absolutely nothing but his labor to sell, and as a result of selling that labor and accumulating some savings he acquires some property as a result of the sale of that labor. Is not the sale of that labor represented in the property that he purchases? Is not the one synonymous with the other?

Mr. DONOVAN: The gentleman has stated the position very clearly, that after selling his labor power and saving as a result of the sale of his labor power, he becomes possessed of property. But that would imply that he was not in possession of property until he had acquired it by the sale of his labor power. We contend that the workman, with nothing but his energy, his skill, his brains and his ability to work, has no property, but he has power to labor, and we hold that it is his personal right to withhold that labor power or to bestow that labor power as he himself sees fit; otherwise we contend that his labor power, which is a part of himself, is not controlled by himself.

As a further illustration of the idea which I wish to convey I will refer to the description of the labor power of our fellow-citizens who now are fighting so valiantly on the front in France. It is not contended that property was conscripted at the time that they were drafted into service, but that they were drafted into service as persons, not as possessors of property. And we know that a distinction always has been made, — in fact and according to common knowledge, — between the man who possesses nothing but his labor power, his humanity, and he who possesses property. Throughout our whole history as we read the debates of former Conventions we know that the distinction was made between the man who held property and the man who was without property; that suffrage was determined in the early days of our Commonwealth by the amount of property in the possession of the enfranchised. We know, — we have heard it quoted here in the debates on the I. and R., — that Daniel Webster made this one of his important points in the Convention of 1820, when he referred to "the masses of the people who possessed no property," and he held that the rebellions, the revolutions that had startled the world and had overturned society, had been caused by revolts against property. Now he recognized a property class and a propertyless class. It was left for the lawyers, or in other words, for the courts, to interpret labor power as property. I believe, if my information

is correct, that William Howard Taft was the first one to issue an injunction in a labor dispute based upon that interpretation. Now I would say that William Howard Taft was the "Columbus" of labor as a property right; he discovered it. Prior to that it was non-existent. To-day it is non-existent except in law. It became necessary for the organized labor movement to seek to remove that interpretation, and the way they sought to do it was to have it declared a personal right constitutionally. They sought to declare it through Congress, and Congress so declared it, but evidently it did not stand. And now we are seeking to declare constitutionally that labor is a personal right and not a property right. There is a great difference of opinion; I can recognize it here. That difference of opinion is not confined to the so-called conservatives on the one hand representing the property class and the radicals on the other hand representing the masses of the peoples of which organized labor is a very important part, but in the labor movement itself, — not so much in the American Federation of Labor, but in the labor movement, taking it in its broader aspect, there is a difference of opinion.

Mr. WASHBURN of Middleborough: Of what use would it be for this Convention to declare the right to labor a personal right if such declaration were inconsistent with the Federal Constitution?

Mr. DONOVAN: I would answer, — and the answer, of course, is obvious to all of us, — that if we made a constitutional declaration that was contrary to the Federal Constitution it would not stand. But I contend that this amendment in no way interferes with the Federal Constitution. I do not know where the idea comes from that it would in any way conflict with the Federal Constitution. To my mind this question is purely a part of the great fundamental question, the labor question. If we take the position that labor is a commodity, well and good. The labor movement undoubtedly will find some way to control that "commodity." But I tell you frankly, as one who understands the labor movement fairly well, its history, its theory and its practical application, or the way in which it faces the practical problems of the day, I know that there is in this great labor movement, not confined to the American Federation of Labor, but the labor movement as a whole, taking in other outside organizations and agencies, a disposition to act upon the ruling such as laid down by the report of this committee. They would say: "Well and good, we accept your position, — the labor power of a human being is a commodity. We seek to control that commodity. This makes us sellers of a commodity which the other class, the employing class, buy. They buy that commodity the same as they buy raw material of any kind, for profit, to turn it into finished material to make profit for themselves. This, then, is evidence of a class struggle, a class war, a war between the sellers of labor power and the buyers of labor power." It is a clear recognition of the class struggle which is the basis of the syndicalist movement, the I. W. W. movement, which so terrorizes many of our good friends on the extreme conservative side of this chamber. This is the foundation upon which their syndacalist's philosophy is built, — that the labor power of a human being under the capitalist system is bought and sold; it is sold by the workers who must live, it is bought by the employers who must have labor power to carry on their profit-making industry; that be-

tween the two an eternal conflict is going on and that there can be no compromise. This represents the point of view of the Bolsheviki, of Russia.

Now, those of us who believe that we, by an amendment to the Constitution at least, may take this out from under the jurisdiction of the courts, and give the labor of a human being standing as a personal right, feel that we are working largely in the interest of reform rather than the interest of revolution.

Mr. WASHBURN of Middleborough: Does the gentleman think that such a declaration as he desires will remove the entire matter either from the jurisdiction of the State court or the Federal court?

Mr. DONOVAN: The opinion of the labor movement, the organized labor movement, the American Federation of Labor, I might say, — and this of course is the opinion that has been given to them by their attorneys, — is to the effect that this would free the workingman from the jurisdiction of the courts on a matter or matters such as injunctions in labor disputes, except in cases where an irreparable injury to property was threatened. Now, if it would not do that, that at least is the purpose of the amendment, and it has been introduced on the advice of the attorneys of the American organized labor movement. Does that answer the question?

Mr. WASHBURN of Middleborough: May I interrupt once more to point out that the Federal Constitution expressly provides that it shall be the supreme law of the land. Now, what the gentleman is seeking to do is not to amend the Federal Constitution, but the State Constitution. The Federal Constitution further recites that the judges in every State shall be bound thereby, anything in the Constitution or laws of any State to the contrary notwithstanding. I still am unable to see how such an amendment as the gentleman desires would take the matter out of the jurisdiction of either the Federal courts or of the State courts.

Mr. DONOVAN: This matter is a legal point, which I am unqualified to discuss, or at least to give a final judgment upon. I can say only that, speaking in behalf of the organized labor movement, which has been responsible for the introduction of this amendment, I believe, and have no reason to think otherwise as yet, that it would serve the purpose for which we seek this change in the Constitution, or this amendment to the Constitution, which has been introduced.

Mr. BENNETT of Saugus: Personally I do not believe that labor is a property right. I do not believe it is property. I also do not believe in the extremes to which injunctions have been carried, and I find a great many here who agree with me, — I have met them constantly, — who are opposed to this amendment and will vote against it. Now, my question is this: Why do you not let this go by and make your fight on No. 266, which is a simpler proposition, and which is very much more likely to receive support? I should like to ask why all this controversy here upon this, when you have the issue presented succinctly in the next number?

Mr. DONOVAN: I would answer that the reason why we do not postpone our discussion of the matter until another stage, or until the other propositions come up, is because we fear that there would not be sufficient fight left in the radical wing of this Convention by the time those come up, and we were taking time by the forelock by jumping into the mess at this time.

Mr. BENNETT: May I ask, is not this proposition something quite different from the next one, more complex and more words in it, while what you are trying to get at is presented more simply in the next proposition? Therefore you get licked on a thing because of other details, while if you confined yourself to your own simple proposition you might carry it. That is what I do not understand, — why this fight on this thing?

Mr. DONOVAN: In answer to the gentleman I will say that the reason why I felt it necessary to project myself into this struggle at this stage is because the report of the committee covered practically all the propositions in one report. They were considered together, and the report was made upon them as a whole, and it was very hard to divide them in the discussion here upon the floor. Therefore it was considered advisable, while the opportunity presented itself, that we do our best to bring in the side of labor on a matter that is before the Convention, at least, the principle which is embodied in practically all those questions or propositions contained in the report of the committees on the Judiciary and Labor, sitting jointly.

I was just about ready to close. I was outlining a few minutes ago the attitude taken by a certain large and considerable section of the organized and unorganized and semi-organized labor movement of this country toward this question, and I was trying to bring to the attention of the Convention the fact that what we seek here is really in the way of providing against a contingency that otherwise will arise. It may be that the decision of the courts to the effect that labor is a property right will embarrass for a time the organized labor movement. I have no doubt in my own mind but what that is the purpose of the decision. Not that I consider that it was in any way dishonest on the part of the gentlemen who made it, but because I recognize that they are representative of certain ideas, that they hold an attitude toward society that is a result of their environment, their economic, social and political environment, — and that naturally their mental reaction is different from that of the man who depends upon his labor for his livelihood, and their philosophy of life cannot but be different.

But I am saying this: That I do not believe that the injunctions issued in labor disputes, which have become much more prevalent as time has gone on, will have the effect that evidently has been intended by their most sincere or most persistent advocates. The interpretation of the decision that labor is a property right is based, according to the report, upon the desire to protect the "thousands of unorganized workers who are outside the labor organizations." I wonder if it would not interfere with the operation, or would not make it necessary for a new decision to be made, if the placing of the workingmen who are outside the labor organizations under the protection of the courts of equity would not be interfered with, in case those workers were not outside the labor organizations; in other words, if they became members of the organized labor movement. It is a fact that the organized labor movement is growing so fast at this time that it bids fair to envelop those thousands who formerly were outside of labor organizations, and who seem to be the hope of those who wish to use them as examples of a property right, and have sought to "protect" them by the courts of equity.

Now, this is the tendency, and it presents problems that go down to the very fundamentals of our democracy. Labor organizations are seeking to protect themselves, and to do it legally; but if all the legal safeguards are taken away, if there is no opportunity to do it legally, the very fact of their being a class dependent upon their labor, — and this is interpreted as being a commodity, — they, like every other producer of a commodity or seller of a commodity, are going to seek to control that commodity, and control it by the power of their organization, just the same as the controllers of oil, the controllers of cotton, the controllers of other commodities have sought and have succeeded in controlling those commodities by the strength of their ownership, by the strength of their organization.

I will leave the question with that thought expressed. I hope that the members of this Convention will realize that the question before us, the question before every governmental assembly to-day seeking to work out the problems of democracy, is this issue of the growth of big, powerful economic groups; the labor organizations, representative of the workers, on the one hand, the big organizations, representative of the other economic groups, the employers, those who control the manufacturing of various commodities, on the other hand. Between the opposing forces a vital conflict is going on that will manifest itself upon the industrial field, upsetting the social life of our Nation, or we will meet those conditions in a parliamentary manner; we will remove the restrictions in our Constitution; we will make it more easily possible for the workers to exercise the franchise as citizens, and in that way we will safeguard them against what is the only alternative, — to rely entirely upon their organized economic power. In this way we will be able to make it unnecessary for them to take action along lines that would be less parliamentary, less in keeping with peace, and the welfare of the community. [Applause.]

Mr. Underhill of Somerville: When the previous question was moved this morning and then withdrawn, I think it was the understanding of the Convention that the debate on this matter would include, and practically conclude, debate on the two following matters; but since that time notification of one amendment has been given to the Convention, and the Convention has been assured that debate will take place on the two following matters, or at least one of them. And so, sir, I think that there has been sufficient debate, and I move the previous question.

The main question was ordered.

Mr. Herbert A. Kenny of Boston: I do not want to take up the time of the Convention on any one of the ramifications of this socialistic problem, but I do wish to call the attention of the Convention to the fact that resolution No. 150 is not as socialistic as the conservatives of this body may think. It is really a copy of section 3 of the English Trades Disputes Act. That act, which has made a great success in the labor movement in England, I will try to quote:

> An act done by a person in contemplation or furtherance of a trade dispute shall not be actionable on the ground alone that it induces some other person to break a contract of employment, or that it is an interference with the trade, business or employment, of some other person, or with the right to dispose of his capital or his labor as he will.

Now, my brother from New Bedford (Mr. Harriman), the eminent labor leader whose discourse on political economics was so illuminating, has brought to this Convention that English Trades Disputes Act. Therefore that should commend itself to this Convention as not being outside the bounds of possibility. The gentleman in this division (Mr. Lowell) said that we were going into metaphysics when we said that labor was a personal right; it seems to me we are going into metaphysics when we say that labor is a property right. As I understand the word "commodity," it means something movable other than animals. That is Webster's definition. Therefore it is a personal right to labor, as I understand it; and that is the construction which the English court, or the English people, or the English highest court, public opinion, has placed upon the English Trades Disputes Act.

I think it is very wrong for the members of this Convention, and particularly my distinguished friend from Somerville (Mr. Underhill), to force this previous question because some man perhaps took up a considerable time and he did not like his sentiments.

This question lies at the fundamental principle of the whole country. You must remember that they are coming back to these shores presently, I hope, because there are rumors now that they have 200,000 of the German army; they are coming back to these shores, — over a million young men. They have learned to keep step, they have learned to be organized, they appreciate the value of organization, and they will be just as jealous of the laborers' rights, and more so, than when they went away, because their minds have broadened. They have been in England; they have fought side by side with the English soldier. The Englishman, when he goes back, knows that he has the benefit of that English Trades Disputes Act, the very act which brother Harriman has brought to this Convention, and which should be adopted by this Convention.

It is only a couple of hundred years ago when two agricultural laborers of Dorsetshire, England, struck for an increase of a shilling a month. They were arrested and tried for conspiracy, and given ten years on a prison ship, and one of them died while in servitude. Now the English trade movement has gone on from that time until this very moment. The latest development of the trades disputes has been given to the English people by Parliament, and my brother from New Bedford has given it to us. I am going to vote for it. I believe labor is a personal right, not a property right. I believe the Supreme Court of these United States and the several States and of Massachusetts, — though it does seem rather impertinent, for a young lawyer, but I am not case-hardened yet to the rights of the people, — I do believe, as my brother from New Bedford said, that the Supreme Court is so steeped in precedent that it cannot get beyond the evidence of precedent and do as our English brothers do.

Mr. WEBSTER of Haverhill: It is an old saying that drowning men catch at straws. I am not prepared to dispute the truth of that, but if it be true I am sure that no unfortunate going down for the third time ever exercised a more despairing clutch at the aforesaid straw than some of us have in grasping for some shred of practical reason upon the surface of this controversy. As I have experienced the successive waves upon waves of argument, and been drenched thereby, I have felt myself approaching a mental condition which perhaps can be

expressed chemically as a saturated solution. [Laughter.] While I am very conscious of the saturation, the solution is not so apparent. [Laughter.]

This, as its friends and opponents alike agree, is a metaphysical discussion. It is all of that. I should say psychological. It has not yet been raised to the spiritual plane, but I have been expecting some honorable member to propose an amendment to the effect that man is a free agent, or something of that sort, which would complete and round off the discussion.

Now, sir, as I understand it, the advocates of this proposition earlier in the debate drew attention to the fact that our courts had reversed themselves upon the decision as to whether labor was a property right or a personal right, the assumption lying in their minds that in both cases the decisions were inimical to the interests of labor. That is proof conclusive to me that litigation or controversy may arise and be submitted to the courts wherein the alternative decision may or may not be in the interest of labor; and why, sir, may not that condition arise again in the future? If we deny recourse to one alternative, and pin ourselves absolutely to the other, are we not thereby developing the position of labor in some future controversy wherein it may be to the interest of labor to decide that it was a property right? It seems to me that there is a point there which has not been cleared up. I confess, sir, that all this long-endured discussion, to my mind, has not convinced me of the advisability of this measure. If I were convinced that it were a step ahead in the protection of labor I gladly should support it. At present, sir, I am not so convinced. I say this in justification of my position as, I hope, a consistent friend of labor and a union man myself; but I intend to vote against this measure in the belief that labor is safer with the condition in the courts as it is.

Mr. Robbins of Chelmsford: This Convention is endeavoring to alter and amend the Constitution of Massachusetts for the better government of all the people and the better protection of the greatest number. In many disputes, and especially in any dispute in which violence is used, the innocent bystander often is hit. In disputes between labor and capital the innocent bystander always is hit. Elaboration upon that point I think is unnecessary. Division of the people into two classes, the employers and employees in the one class, and the rest of the citizens in the second, will be brought about surely by the adoption of this proposition, as indicated by the language in document No. 337.

The discussion upon this matter has been long. I have heard some of the speakers and some of the speakers I have not heard, but to my mind the whole point to be gained by the advocates is the removal of the injunction. How would this operate in practice? I am not a lawyer, so I cannot deal with the legal aspects of this question. I only know that as a member of that second class, outside of the employers and the employees, I feel a sense of security under present conditions which I believe I should lose if this amendment was adopted by the Convention and peradventure approved by the people. What confronts us to-day is unrest. Why? Because the whole world, financially, socially and industrially, is in a turmoil. Read your papers, — a strike here, a tie-up there; government work, some of it.

After the war, — what then? You cannot discount the possibilities. Would you wish to give more power to this first class, or more restriction? There can be but one answer. Always, when danger is impending of any nature, we wish to cope with it with all possible lawful means. The gentleman from Brockton in the second division (Mr. Brown) has said if the courts are wrong, change the courts. Does he not mean, if the courts decide contrary to his views of what is right or wrong, change the courts?

If the proposition went no farther than its language would imply, it perhaps would be harmless. Take the first two or three lines:

> The labor of a human being or the right to labor is a personal right and not a property right or a commodity or an article of commerce.

That in itself is harmless. But if labor is not property no injunction is operative. There is the trouble. Other portions are harmless in themselves. Organize, walk out, stay in, — but let other people do the same. Organization for protection is all right; it has my indorsement. But organization which gets beyond the control of even its organizers I contend needs some means of government and control.

Mr. HARRIMAN of New Bedford: I would be rather ungracious perhaps to further take up the time of this Convention except in a very brief way, to draw some conclusions that perhaps I missed yesterday, or which have not been brought to the attention of the Convention.

The gentleman who has just taken his seat (Mr. Robbins) has referred to unrest. There is probably no better authority as to the reason for unrest than the summing up of the Industrial Commission, after all their exhaustive hearings, and I read this to this Convention:

> First, the unjust distribution of wealth and incomes.
> Second, unemployment, and the denial of an opportunity to earn a living.
> Third, the denial of justice in the creation, adjudication and administration of law.
> Fourth, the denial of the right and opportunity to form effective organizations.

I believe that to be true; and while I am particularly interested in the first three or four lines of this document No. 150, I hope there is no man in this Convention but what realizes the sense of the closing lines of that document, which has been brought to our attention by the gentleman from Boston (Mr. Herbert A. Kenny). You men may not believe in the English system, you men may not believe in what the English working-men are doing; but if there is anything upon the face of the earth at this time that holds any hope, any well-regulated scheme for the future, it is the manifesto that has been produced by the English working-men since this war commenced. I recommend it to every one of you. Those people in England have fought and died for the right to include the last two lines of document No. 150.

I presume it will not be passed by this Convention. I may live to see it, — I hope I will; if not, for the salvation of this country it must be that those lines shall become the law of this country. Unrest exists, and how is it to be cured? It is to be cured by the majority of the working people of this country, the so-called wage-earners, the working-class; and until they receive their rights, prosperity and peace will not exist in this country and justice is absolutely impossible.

Mr. LOWELL of Newton: I want to point out again, as I tried to

yesterday, the real meaning of this resolution and of all the other resolutions. We have heard interesting discussions here on an academic question of property in labor, or labor power, — whatever is the difference I do not know, but there seems to be a difference between labor and labor power which is beyond my capacity to fathom, — but we have heard a very interesting discussion, almost entirely upon that aspect of the question, from the advocates of these measures; and it is very clever, I think, to try to turn the attention of this assembly from the real reason for these measures to an interesting question which is entirely harmless in itself.

But, as I said before, the laboring men of this country are practical men. One of the ablest men in this country, with whom I am happy to say I have a slight acquaintance, is Mr. Samuel Gompers. Do you suppose for one moment that Mr. Samuel Gompers cares whether we put into the Constitution of Massachusetts that labor is a personal right, or property, or anything of the kind? Of course he does not. What Mr. Samuel Gompers would say, if he were asked and he responded truthfully, would be: "We wish to have this thing in our control; we have got a great deal of it now within the hollow of our hands, and we want the rest of it."

That is the situation. It is not a professorial discussion over terms of art. It is not anything of the kind. It is the practical question whether organized labor shall be without control in this Commonwealth. As I said at first, nobody will deny that the courts have issued injunctions wrongly sometimes and have carried them too far, and so on, but that is not the question. The question is: Is there to be any power in this Commonwealth that shall be above the labor power? And I say there ought to be. Now, if you do not agree with me, vote for this proposition; if you do, vote against it.

The amendment moved by Mr. Brown was rejected.

The resolution (No. 150) was rejected Friday, July 19, 1918.

Mr. Daniel R. Donovan of Springfield presented the following resolution (No. 219):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

The labor of a human being shall not be held to be a commodity, article of commerce or a property right, and the right to enter into the relation of employer and employee, or to change that relation, or to assume and create a new relation for employer and employee, or to perform and carry on business with any person in any place, or do work or labor as an employee, shall be, and shall be held and construed to be, a personal and not a property right. In all cases involving the violation of the contract of employment by the employee, whether singly or in numbers, no injunction shall be granted except where it shall appear that irreparable damage is about to be done to property, but the parties shall be left to their remedy at law.

The committees on Labor and Judicial Procedure, sitting jointly, reported that the resolution ought NOT to be adopted.

It was considered by the Convention Friday, July 19, 1918, and was rejected the same day.

THE DEBATE.

Mr. BENNETT of Saugus: The question which I would have asked the gentleman from Newton (Mr. Lowell) and which I think he would

have done well to have answered at the time, is: Why, — if he thinks it is vague and chimerical and visionary to discuss whether labor is a personal or a property right, — why did he put in document No. 337, over his own signature, at the bottom of page 3, the following:

> The sole purpose of the resolutions in declaring it not property but a personal right is to put it beyond protection by injunction, as this ordinarily extends only to injuries to property or property rights.

Is that visionary? Is that vague, is that chimerical in any way? No. But he puts there over his own signature the reasons why this declaration of principles is sought, and then he proceeds to get up here and say that the discussion is of no importance.

Mr. LOWELL of Newton: I thought I made it as plain as my limited command of language would allow me to, that I was against taking away injunction in this kind of cases.

Mr. BENNETT: I refer to the stenographer's notes, if he did not say that this discussion was practically worthless, of no importance, or visionary, — words which meant that, — because it did not make any difference whether it was a property right or personal right. I understood that; that was the force of his argument.

Now, I appeal, — as the gentleman in the Chair (Mr. Luce of Waltham) said here one day, — from Philip dreaming to Philip awake, to what he wrote here over his own signature.

Some years ago, a good many years ago, there was a man up in Lawrence working in a little machine shop. He was considered by most people a crank. He spent his nights and days pottering over a piece of machinery, and he killed, pretty nearly, some of the people who worked with him, and if his constitution had not been very strong he would have killed himself. What property was there in his labor? He was considered a crank. There was no property in his labor. He produced the McKay Sewing Machine, and to-day there are about $34,000,000 for the lawyers to quarrel over as his estate. When did his labor become property? At what point did it become property?

Two or three hundred years ago, over in the Netherlands, there was a man working nights and days, and going without food and sleep, seeking expression for something within him in a great painting. He could not borrow a dollar, he could not get enough food to eat, but he did not care. His soul was finding expression. And now, two or three hundred years later, the result of his effort sells for $100,000 or more. When was his labor property, and how was the property valued?

At the present time there are a lot of distinguished citizens of this Commonwealth working in Washington and in Boston for a dollar a year, giving their labor to the Government for a dollar a year. Is that labor property that is being given for a dollar a year?

Here is a man of great mind, of great intellect, of great capacity, who labors for evil, and all the results of his labor are evil. Is that property?

You go to hire a man to milk cows, or to set type, or any of the other occupations with which I am familiar. Take the reporter on a daily paper. Can you size up the property, can you size up the enthusiasm, can you size up the expression of his soul, can you size up the industry, can you size up the product he labors for? No, it is the

product of labor that is wealth, and not the power to labor, which may be spent evilly, or which may be spent for good.

I do not belong to any labor-union, and I never saw a copy of Karl Marx. I am going to get one right off and read it, but I never saw a copy of Karl Marx's works. I have seen quotations from them. I do not believe labor is property, and I believe that the injunctions in labor troubles are often an expression of that improper and selfish distribution of wealth which we are growing out of. But it seems to me that I never have seen a better manifestation of the reasons why the labor men sometimes do not get farther ahead than has been made here in this discussion and in these three separate propositions. There is not one of them carefully drawn. Why, here is what seems almost the best of them, presented by Mr. Moriarty, and at the end of it it says that they should not interfere with certain efforts, — the courts should not interfere with certain interferences of the labor men, unless the interference is lawful. That is what he says in that resolution there. In another measure, — a man has stood up here and said labor was not property, — it says in the very resolution itself, the very amendment itself, that labor is property. The very amendment itself says that. None of them is drawn carefully, and I think I am right in inferring, and I do infer, that what most of them desired was not to carry through some reform for the good of mankind, but to make a buncombe demonstration for constituents somewhere.

That is what every one of these propositions seems to me like. They are all aimed at those two things. One is to restrain the use of the injunction, curtail the use of the injunction, and the other is to declare that labor is a personal right. Whatever the scope of that may be I do not know. It seems to me if they had got together, and they all had united on one simple proposition carrying those two elements, those two conditions, I really believe they would have carried it through the Convention. I do not know, but it seems to me it might have been done.

We had a discussion here the other day about autocracy; and the labor movement in the United States never gained wide-spread and universal respect until it had an intelligent and altruistic autocrat at the head of the American Federation of Labor, who is taken into council with the President, and who commands universal respect. Do you suppose that he would have sanctioned any such boy's play as has been in this Convention with these four or five different propositions antagonizing each other, when they all claim to have the same ends in view? Yet they come in here; one gentleman wants to show his constituents that it was his, another that it was his, and four or five others that it was theirs. I think it is too bad for them. I do not care personally anything about it. I have nothing at stake, excepting that I should like to see a true solution of these problems. I think a true solution lies in those two directions. I think the use of injunction has been scandalized in the United States to a great extent; and I think, whatever may grow out of this declaration, — it seems to me there is not any difficulty in determining the difference between labor and labor power, — the final result of this will be that the use of injunction will be curtailed, — nobody doubts it, — and that labor will be declared to be what it is, — service, obedience to the Great Com-

mandment, "If any man will be first among you, let him be your servant." Labor is service; and I wish we had something before us that we could vote for with a clear understanding, and a clear and reasonable support of these issues. [Applause.]

The resolution was rejected.

Mr. James T. Moriarty of Boston presented a petition of the Massachusetts State Branch of the American Federation of Labor, accompanied by the following resolution (No. 220):

Resolved, That it is expedient to amend the Constitution by the adoption of the subjoined

ARTICLE OF AMENDMENT.

SECTION 1. It shall not be unlawful for persons employed or seeking employment to enter into any arrangements, agreements or combinations with the view of lessening the hours of labor or of increasing their wages or bettering their condition; and no restraining order or injunction shall be granted by any court of the Commonwealth or by any judge thereof in any case between an employer and employees, or between employers and employees, or between persons employed and persons seeking employment, or involving or growing out of a dispute concerning terms or conditions of employment, or any act or acts done in pursuance thereof, unless such order or injunction be necessary to prevent irreparable injury to property or to a property right of the party making the application for which there is no adequate remedy at law; and such property or property right shall be particularly described in the application, which shall be sworn to by the applicant or by his agent or attorney.

SECTION 2. In construing this act, the right to enter into the relation of employer and employee, to change that relation and to assume and create a new relation for employer and employee, to perform and carry on business in such relation with any person in any place, or to do work and labor as an employee, shall be held and construed to be a personal and not a property right. In all cases involving the violation of the contract of employment either by the employee or employer where no irreparable damage is about to be committed upon the property or property right of either, no injunction shall be granted but the parties shall be left to their remedy at law.

SECTION 3. No persons who are employed or seeking employment or other labor shall be indicted, prosecuted or tried in any court of the Commonwealth for entering into any arrangement, agreement, or combination between themselves as such employees or laborers, made with a view of lessening the number of hours of labor and increasing their wages or bettering their conditions or for any act done in pursuance thereof, unless such act is in itself lawful.

The committees on Labor and Judicial Procedure reported recommending that the petitioner have leave to withdraw.

The resolution was considered by the Convention Friday, July 19, 1918.

Mr. John D. W. Bodfish of Barnstable moved that the resolution be amended by striking out sections 1, 2 and 3, and inserting in place thereof the following: —

Full power and authority are hereby vested in the General Court to provide for the adjudication of any controversies between employers and employees and to provide against lockouts, strikes or any other course of involuntary or unnecessary unemployment and to fix penalties and make any other reasonable or necessary provisions to carry out the purpose of this amendment.

This amendment was rejected, by a call of the yeas and nays, by a vote of 97 to 112.

The resolution was rejected Tuesday, July 23, 1918, by a call of the yeas and nays, by a vote of 126 to 79.

On the following day a motion was made that the vote by which the resolution had been rejected be reconsidered; and the motion to reconsider was negatived.

THE DEBATE.

Mr. Dennis D. Driscoll of Boston: I do not know whether it would be wise to make a motion to substitute the resolution of the Massachusetts State Branch of the American Federation of Labor for the report of the committees, or whether it would be better to discuss the question in our way and place the matter before the delegates in the Constitutional Convention, but if in order I move to substitute No. 220 for the report of the committee.

The Presiding Officer: The Chair would state that the question before the Convention is one upon rejection. If rejection is negatived that will substitute the report of the committee automatically.

Mr. Dennis D. Driscoll: That is agreeable to me. I was looking for the technical points of parliamentary tactics, because very often in organizations they are important.

I am not going to take up much time of this Convention on this great question of injunctions. I have nothing up my sleeve, I have no secrets, I have nothing to cover in the interest of such legislation as is here; but I am going to try to prove to the delegate in the fourth division (Mr. Bennett) that when men of honor make agreements some power unknown turns the vote of representatives of this Commonwealth to defeat the very thing that the delegate in the fourth division just spoke about. Injunctions are a very important subject, used by employers of labor to destroy freedom, free speech, and the right that belongs to every American citizen, and I am going to prove it by the injunctions served on me.

The arguments made on the question of labor being a property right, etc., and the extension of the decisions of the judiciary, show what is so far-reaching that it is the cause of the unrest in this Commonwealth to-day. There is no man in this Convention who has more respect for the courts than I have, and I said so a few weeks ago. I said that the system of the courts of this Commonwealth was a credit to this country. And I said the same on Boston Common at the biggest labor demonstration ever held there, — that on the Moyer, Haywood and Pettibone trial in Colorado. I said that if we found fault with one or two men appointed as judges in this Commonwealth it was not the fault of the system of the courts, but of their decisions. I always felt that no one judge was the court, that the court was the majority vote of the Superior or the Supreme Judicial

bench, but in such court decisions as we read in the public press or in volumes of decisions we see that sometimes the judge assumes the authority to be the court. And what I want to call to the attention of the delegates is this: The same bill I think was at Washington, D. C., and some of the greatest lawyers of this Commonwealth had their opportunity to try and stop this far-reaching injunction proposition that is used by the employers of this Commonwealth.

In 1906, with the criticism of some of your newspapers of this city, I challenged the committee on Judiciary to give us a recess committee to hear this important subject, and asked that some judge, some business men and some labor men be appointed upon it and hear this question. A recess committee was appointed, and we brought Mr. Gompers from Washington, D. C., and we brought other men throughout this country before this committee. I believe some delegates to this Convention, some of our well-informed attorneys, could give better reference to what I am going to mention than myself, or perhaps they were part of the agreement that was drawn. And I believe the gentleman who was then secretary of that committee is a reporter to-day of the doings of this Convention for one of the newspapers of our city, and he can tell you the same story. But the weight of the invisible government brought about defeat in the State Senate of this Commonwealth. I now report that we agreed after a whole summer of discussion on the question of injunctions on a very little resolution, a very small one, and I think the representatives of the railroads, the attorneys, agreed to it. I think the committee came back to itself, and said: "We have a small bill, and it means peace between the courts and the labor movement of this Commonwealth."

It went through the House of Representatives. The representatives of organized labor accepted it. That was in 1906. In 1907, a year that I remember well, there passed through the House of Representatives the enactment of that law, and when it came to the graveyard of legislation, the State Senate of this Commonwealth, the very man who sat on that recess committee and voted for that bill, because he thought it was a benefit and a relief from the courts, was the man who changed his vote in the State Senate of this Commonwealth and defeated that bill. Perhaps that was the last year that he served in the State Senate of this Commonwealth. Was that the invisible government? Was that the representative of the corporation, who agreed with the representatives of organized labor to bring about peace between the courts and the trade-union movement? I defy contradiction, and a record can be found of the actions of the men, of the attorneys, who appeared before that recess committee. I attended every meeting during the summer as the representative of the Massachusetts State Branch of the American Federation of Labor, taking the place of one of the best orators of this Commonwealth, Frank K. Foster. That is the method of legislation. That is the method of whom?

The people would say we have no reason to fear the courts. Certainly we have no reason to fear the courts, but it is about time that the judges of our courts told the employers of labor, and especially the attorneys, that they are no longer to knock at the home of the judge at seven o'clock in the evening or send papers to our houses at midnight for strikes we know nothing about, serving a notice upon us

because we are officers of the trade-union movement, to appear in court on Monday morning on a writ of injunction in the course of a strike. Is that what the injunction and what the courts are made for? Let me prove it to you.

When the Boston Herald was putting up that building on Tremont Street, Haskell Brothers were the backers of it. An agreement was made by the Boston Herald at that time through the Haskells, — and I mention the name of the paper so that it can bear investigation, — with organized labor, and the men went to work to hurry up the building day and night, to erect it so that it could continue on its business, and everything was to be done by arbitration and friendly relations. I had nothing to do with it. On Saturday night the firm of Haskell Brothers had broken their agreement and brought in some furniture from the Derby Desk Company, — I think that was the name, — which was unfair to organized labor, and the working-men, after the agreement was broken by purchasing the furniture, said: "We refuse to handle it." Immediately an injunction was proceeded with. The judge who represented the courts of Suffolk County issued an injunction on me as the Secretary-Treasurer of the State Federation of Labor to appear in court on Monday morning at ten o'clock and answer to the summons delivered at my home. My wife and family were at that time in a condition of fear, but of course midnight did not phase me then, I was home an hour after the paper was delivered, — perhaps one o'clock Sunday morning. I was called out of bed at half-past four by the same man to meet with another representative of organized labor, with him, in Wells Memorial Building. This is where I object to interference with the powers of courts on injunctions. On Sunday morning at nine o'clock Henry Abrahams, Mr. Haskell and your humble servant met in the office of the Boston Central Labor Union, 987 Washington street. I said to Mr. Haskell: "You are bringing me into court to-morrow morning at ten o'clock. What for? What have I done? Bring me down to your building and I will try and settle that difficulty." And after three propositions I submitted to him for himself, — what right has he got to be the court? — he sent word to me at 8 o'clock on Monday morning, or at six o'clock: "Don't report to court. The case is dropped." That is using the judges of this Commonwealth in a scrap of organized labor between employers and employees.

How about the fight on Keefe on Columbus Avenue because he would not hire union men? That is what makes unrest. They referred the case to a master, and after spending $7,000 in the case are we ever going to get a trial out of it? Two years ago, because we said the firm was unfair, the master made a recommendation or a finding. We are waiting for trial. Why do they not give us a trial, before the judge, not before a master, to see whether we have violated any law?

What right have the courts of this Commonwealth to tell me as a labor man that I could not walk on certain parts of the streets of Boston because there was a fight between a firm and organized labor, just because, unfortunately or fortunately, I had the honor to be the Secretary-Treasurer of the Massachusetts State Branch of the American Federation of Labor up until about 1908? And during that time, that is what I objected to, — that the employer, through the advice

of his attorney, would serve writs on honest, innocent men to appear in court on the question of injunction. Then you say we have some rights and freedom of organization. Obliged to use the courts to form a ring around the power to tie up the freedom and the liberty of the working-men! That is what the trade-union movement objects to. That is the reason they are fighting to get the right to prohibit injunctions in the time of dispute. I am in favor of the protection of property, I believe in upholding the country and the laws, and I defy any man in this Convention or in this State or in this country, after my many years of dealings in the labor movement, to point to one dishonest act of mine in the handling of the question of organized labor between employer and employee at any time in the course of my life.

When they speak about the difference of opinion of the trade-union men, that is true, and when they ask us here: "Why are you not a unit?" I reply that it would be a bad thing if we were a unit. It might be worse than it is to-day, and it is better to have a little division amongst us. But when a man says to this Convention that because a delegate had the honor of being a labor man he represented the labor movement, we do not throw back the sarcastic insinuation and say that because you are a lawyer you represent the bar association. I am a labor man. I am elected from the seventeenth Suffolk district, and they are the people who sent me here. Because we come here everybody uses this as opposition to the question of labor. I want to say to the delegates to this Convention that this resolution is the bona-fide measure of organized labor of this Commonwealth, and we can stay here for years. In the words said by the gentleman in the third division, the system of organized labor is the question that we will get what we want, and if we keep on in this fighting way, keeping it before the public, that is true. We want public sympathy. When the labor movement knows what has come from this Convention it may force it to continue its action of a few weeks ago to bring about, after next September, a thorough organization of the officers of the labor movement, and force them into political activity, which will be a benefit as a result of this Convention.

The labor movement does those things. That is the reason they go out before the people and tell the people that it is their fight. They want the right to strike. They want the right to organize. They want the right to educate. They want the right to go out and state on the public streets of Boston that John Smith is out on strike, that Jim Jones is unfair to organized labor, that he will not pay union wages and that he will not allow the regulation of the hours of labor. We stand for conciliation. We are an admirer of arbitration, and I believe that when a trade-union signs an agreement between employer and employee it should back it up loyally and manfully to the expiration of such an agreement. That is my understanding of the labor movement. I do not believe in breaking agreements, the same as some of them break them to-day in this Commonwealth. But I believe, and I believe that every delegate in this Convention will agree with me, that the courts go too far. They have no right to step into these petty strikes without first giving a hearing before putting a summons on us to bring us into court, and if they do put a summons on us to bring us into court what right has the employer or his attor-

ney to take that writ away and say we are not requested in court? That is what brings to the working people of this Commonwealth discouragement and discontent over the courts of Massachusetts, and those are the methods and the acts.

I trust and I believe, and I want to say to the delegates to this Convention, as I said before the measure was introduced that I believed, that it is a question of legislation, and not an amendment of the Constitution, and the day will come when it will be adopted.

Like everybody else, I carry a union card, and pay my dues. I do not hold any other office but the office of secretary of the Trades Union Liberty League, and we are much interested in the election in the coming fall of many men in the public offices of this Commonwealth. As far as active work in the labor movement is concerned I take a back seat and sit down and mind my own business, and when requested or invited by employer or employee I give my services free to keep peace, to end strikes or anything for the benefit of the Commonwealth, and I trust that the delegates to this Convention will bear this in mind. Your sympathy is no good to us if it is not sincere. We cannot live on sympathy. Up till December 5th, 1907, true, my occupation was a horseshoer, and up to the day of December 5, 1907, and what happened in Governor Guild's office I stated, I stood behind the anvil, there was not a position in the gift of the city or the State that I would leave that position to accept. But since that day, like other men in the walks of life, I have held the other positions connected with labor organizations.

The labor movement will make its mistakes. The office of the trade-union movement honors conscientious men. We do not believe in throwing "bull." We do not believe in explosion. We believe in public discussion, we believe in education on all these questions, and we believe in stopping the courts. We should have the freedom that rightly belongs to us, the right to strike. And there is the whole plain story on the question of injunctions in the argument that you have just been through on the question of the right of property to the property of labor. Part of that may be of service in this. But the day is coming through the right kind of legislation and the right kind of men we send to the Legislature, that when we make an agreement again, and we agree upon something that will make peace and happiness, we shall not allow the invisible government of Massachusetts and the turning of men on a recess committee to prevent peace when it meets with the approval of such lawyers and delegates as have sat in this Convention in the interest of harmony between employer and employee of this Commonwealth. That is what I say to the Convention. I have taken up more time than I intended to. That is the fight of organized labor. That is labor's fight. True, I believe it is the principle of the trade-union movement. Defeat your enemies, and be loyal to your friends, no matter what their politics may be. And that is what drove them to it, — the Legislature's actions of the past year. I participated in much of it, and I never regret one act of mine in the interest of the people of this whole Commonwealth and the advancement and protection of the hours of labor or the interest of legislation for the benefit of all. I trust the day will come when we shall not be coming annually to the Legislature and the lines of parties will be dead and the liberal spirit of Americans will be brought about

so that the lawyers, the doctors and the professors will be a unit in the maintaining and support of this Commonwealth. [Applause.]

Mr. UNDERHILL of Somerville: It has been quite a number of years since the gentleman in the first division (Mr. Dennis D. Driscoll) and myself stood behind the anvil, blew the forge, wore the leather apron, pared horses' hoofs, etc., and although the gentleman has given up his leather apron for a Palm Beach suit and now manicures his fingernails instead of paring horses' hoofs, his bellows is in good condition and his voice rings loud for the cause of labor.

But, all joking aside, I have the highest regard for the gentleman and his career since he left his honorable employment as horseshoer and has taken up more actively the affairs of labor. If all the labor leaders were as fair, honest, and upright as he, there would be less trouble in the Commonwealth, in the country and in the world.

So, I now address those who have forgotten through this long debate of two days that there is another class of people in the Commonwealth. There are others who ought to be considered besides labor, as so called by union leaders and the politicians. They are the regular common people, the teachers, the doctors, and others in professional lines and manufacturing and clerical employment. I have lived among these people all my life, and I think they are entitled to some consideration, and that union labor has no particularly fragrant bouquets to throw itself, after the position it has taken in the last two or three months. I am speaking also for our boys across the seas, and for those in camps on this side, who cannot go across, for lack of equipment. Why? Because there is a strike! And what is the strike for? Higher wages? Better conditions? Not on your life! It is for the recognition of the union, after the promise of union leaders to President Wilson that there should be no strikes along that line.

Mr. DONOVAN of Springfield: I should like to ask the gentleman from Somerville if he would tell me the strike that he refers to.

Mr. UNDERHILL: I hold in my hand a copy of this morning's paper. "Demand made by the Lynn strikers. Recognition of the union." The first and chief demand "*recognition of the union.*" There never has been a strike there before, there never has been dissatisfaction, so far as I know. They were working not as union men, but as well-paid and satisfied workmen, and they struck because of the interference of paid agitators of union labor, in order that they may organize this plant.

Now, what is the reason for union organization at this particular time? To my mind it means just one thing. I have information from a man who attended the last National Convention of the American Federation of Labor. He said the principal question discussed was: "What will be the condition of union labor at the close of the war?" That gave them the most concern; when the enlisted men, these millions of men should come back from abroad and from our cantonments and become competitors in the market of labor, what would be the condition of union labor? I believe the answer has been shown in the newspapers of the last few weeks, that they have come to a decision, and that the birthright of the men who have gone across and are working for $30 a month and their keep is to be taken away from them when they come back because of the complete and powerful union organization of industrial plants.

Now, sir, if there is one law under Heaven that helps in some way, shape or manner to control union labor, and we have it on our statute-books or in our Constitution, in the name of those men across, in the name of the common people of this Commonwealth, for God's sake leave it there. Do not take it away, because it is the last defence we have. From the President of these United States down to the members of the Massachusetts House of Representatives, and others who hold official positions by the votes of the people, most of them are afraid down in the bottom of their soul of the labor vote. They are afraid of it. They have favored and flattered it, petted and pampered it, fed and fattened it, until they have raised a tyrant in their midst, a master with which they cannot hope to cope unless there is some control upon its action.

I am not ashamed of my labor record. I have voted for and urged such labor measures, so called, as the Workmen's Compensation Act, the full crew bill, etc. I was the first in Massachusetts to urge before the Legislature an eight-hour law for the women and children of this Commonwealth. What was its reception? Every labor leader in the House of that day opposed it. Every labor leader in the Senate opposed it. I have been as active as my strength and intelligence would allow in an endeavor to better the condition of the children of the Commonwealth, and, when I began my fight and for many years after, not one voice of a labor man was raised to help me; not one. But, sir, when it comes to a question of the restriction of production, and that seems to be the principal idea of to-day, I part company with union labor and maintain with all the strength of my being that the restriction of production is not conducive to the welfare of independent labor or union labor, to the prosperity of the people of the community or to the uplift and success of the Nation as a whole.

The government has been calling upon us, every one of us, to do our utmost, to put forth the last ounce of energy and strength we have, and what has labor been doing? Has it agreed to work *more* hours a day? Oh, no, *less* hours a day. Every strike, almost, calls for fewer hours, a restriction of production and increased pay. The boys across, the $30 a month boys, are working day and night, no restriction as to the number of hours they put in. Winter is coming on and they will need winter shoes, and what is happening over here? A strike! A strike by men who entered into a solemn contract with their employers and with the labor-unions themselves, and those men are treating their contracts as the Germans have their treaties, — as a scrap of paper, a mere scrap of paper.

Those are the men who the gentleman in the second division (Mr. Brown of Brockton) said the other day were paid more than a living wage, were contented and prosperous, and he boasted there had not been a strike there for twenty years; and yet they take advantage of the situation that exists to-day and they are willing that their wife's sons, bone of her bone and flesh of her flesh, shall go barefooted on the frozen fields of France, in order that they may enforce their leaders' demands here. These strikers are quoted as saying: "We are not influenced by German propaganda. We are patriotic. We have bought Liberty Bonds, and War Savings stamps." Oh, is not that patriotic! Children have bought savings stamps. Every man who possibly could afford it and many who could not afford it bought

Liberty Bonds. That is an investment and they deserve no credit, unless great sacrifices were made, for it. Some have given their sons! They have done no more than the poorest and wealthiest men and women in the country have done. They have done no more than you and I have done. We are willing to give our boys, but we want a fair deal for those boys. Ah, those laboring men, the men of yesterday, the day of the gentleman in the first division (Mr. Dennis D. Driscoll) and myself behind the anvil, they are not that kind of men, — they were not that kind of men! Look upon the pay-roll of any of your big manufacturing concerns to-day, and how many names can you pronounce? You find once in a while one of the old-fashioned names, like Driscoll or Underhill, but you do not find many, — not many. And, sir, to my mind those men with alien names are creating and fostering treason to-day in the Commonwealth of Massachusetts.

I introduced a bill to the last Legislature calling for a prohibition of lockouts and strikes during the war, providing that for two weeks after disputes should arise, and demands made, the men should continue at work until some proper board should adjudicate the case. Union labor was against it to a man. Why? It restricted the rights of labor. No thought of the rights of the millions of men who were going "over there"!

We have heard a lot to-day about the abuse of the laboring man by the employer, the abuse of the unions by the courts. Well, sir, let me present one or two cases and show you another side of the shield.

To my attention not long ago came a family, — a wife, husband, six children. The man was seriously ill. His illness was of a long duration, and for six months we did all we could to keep that family together. We happily succeeded. He was a painter by trade, and upon his partial recovery I secured some little inside work in our vicinity for him. As he grew stronger I looked about for other places, and I found a good big-hearted man who had an inside job in one of the hotels in Boston who said he would employ him. This man put him to work, but the business agent or walking delegate of the Painters and Decorators Union came to the employer within two hours and said: "Mr. R., I will have to call our men out. You have non-union help here." "Why", he said, "I haven't anything of the sort." "Yes, you have", replied the delegate, "a new man went to work this morning". "Well," said Mr. R. "send him to me, and I will have him join the union." My friend said, "Mr. R., I am willing to join the union, but they won't let me." "Won't let you? What do you mean by that?" "Why, sir, they want $50! You know I have been sick for six months. The butcher, the baker and everybody in my vicinity have trusted me because they knew I was honest. The union won't take $10 a week for five weeks out of my pay in order that I may join, they want $50 *at once;*" and when Mr. R. offered to advance the money the agent said he could not work on that job anyway.

Last spring, while sitting in this chamber, I was called out by a man who said: "I have been a foreman carpenter out in your town, and, as you know, the building business is dead; there is not a thing doing. I have a job offered me at Ayer, and the union won't let me go to work." I said: "Why don't you join the union?" He replied: "I have tried to join the union, and the only condition under which

they will take me is that I shall not go to work at Camp Devens." I called into consultation a man high in the councils of the labor-union movement, a man for whom I have a great deal of respect. I put the case up to him, and he said to me: "Charlie, we can't do a thing with the building trades. We cannot do a thing with them."

Now, those are two instances. You say they are isolated. There are hundreds just like them, and you know it. Unions leave to charitable associations the care of their unfortunates who do not pay their dues. I know, because they have come to me for help. They will not let a man work unless they can tell him where he shall work and what he shall do. Is that any better than some of the employers of labor do? Do you want it all? Is there not a grain of comfort, is there not a particle of justice for the greater majority of the people of this land, who do not belong to labor-unions, or who have not sufficient income to put them in the capitalist class?

The gentleman in the first division (Mr. Dennis D. Driscoll) said they wanted the sympathy of the public. They must go about it in a different way to get that sympathy. As we read that in Lynn the employees of a firm making surgical instruments for use in the trenches and in the hospitals are going to call a sympathetic strike to help the strikers in another plant unionize, or when our women go up to the Red Cross to do voluntary work and there is no gauze to work with, because there is a strike, how much sympathy do you suppose that brings to union labor? I should consider myself false to my trust, false to my country, false to my God, if I did not stand here to-day and protest against the action of labor during the last two months, yes, since the beginning of our going into this war. It has been disgraceful and disloyal.

When it is all over the people are going to ask: "What have *you* done? *What* have you done?" "Oh, we bought Liberty Bonds and we bought War Savings Stamps, and we gave our mothers' sons and our wives' sons for cannon fodder." There is no greater gift than that a man shall give his only begotten son that the world may be saved. That is God's example taught us from the time our minds were first receptive to the voice of our teachers. But, sir, if a man forgets that there is an obligation to that son, if he forgets there is an obligation to the wife and mother, and if he says: "*MY* union first, *MY* union forever, to hell with *THE* Union!" what kind of a patriot is he? That seems to be the attitude of union labor of late. Where is my proof? Take up any paper for the last three months, any of them, and you will find my proof right there, and the papers do not give it sufficient publicity at that.

The only excuse they give is "Profiteering; Look at Hog Island." That is an excuse. It is not an argument. It is not a defence. There is an old French saying that he who excuses accuses, and it is self-accusation when they themselves are doing the very thing for which they condemn some one else. The men who were accused by politicians of profiteering at Hog Island said: "For God's sake let us build the ships first and put us in jail afterwards." The men who struck at Hog Island for shorter hours and more pay would not treat with the board of arbitration which had been formed for such very purposes by the government at Washington. Their attitude was: "Oh, no, we have you by the throat. We are going to take advantage of every

opportunity that offers, and we are going to strangle you into a position where you dare not resist our demands."

The autocracy of Kings and Emperors! Is it any worse than the autocracy of the Bolsheviki? Theirs is the plan you are urging to-day. The bourgeois of Russia were the sufferers, and the poor people in my class and in the class that most of you live will be the sufferers here. It is not a question of whether a man is working for profit for another, because it does not follow, when labor strikes and the employer is obliged to accede to his demands, that the employer makes any less money. He raises the price, and we, middle class and poorer class people, and labor itself in other industries, pay the bills. Then other labor strikes and the price of that commodity goes up, and another one asks for increased wages because of the high cost of living, and the price of that commodity goes up, and in the words of the old song of Battery A: "We go round and round with our feet on the ground, and I guess that's going some." It is a continual round, a circuit without a terminal. The increased cost of living mounts and mounts and mounts, and wages go up and up and up, and the professional man, the salesman, the small business man, the backbone and strength of the Union, cannot get another cent added to his income.

Profiteering? The manufacturer has to pay back to the government a large percentage of his profits. The man who gets his wages raised and hours reduced — does he pay anything? He does not pay one cent more. No, he blows it in. Go to our industrial centers to-day and look at the stuff they are buying, — diamonds, victrolas, player pianos, etc. They are going to work in their automobiles. They are getting more than $5,000 a year, some of them. Why, $100 a week is nothing to some of the employees to-day. They are the plutocrats of the community. And yet they say that the only thing that we have to-day which gives the defenceless people a measure of protection must be removed from our Constitution. *God forbid.* [Applause.]

Mr. Benton of Belmont: We heard the delegate from Brockton (Mr. Brown) criticizing certain ones because they were not present. I am not criticizing him at all. I wish he had been present to have listened to the very able address of the gentleman from Somerville (Mr. Underhill).

I move you now that this Convention adjourn.

The debate was continued Tuesday, July 23.

Mr. John D. W. Bodfish of Barnstable moved that the resolution be amended by striking out sections 1, 2 and 3, and inserting in place thereof the following: —

Full power and authority are hereby vested in the General Court to provide for the adjudication of any controversies between employers and employees and to provide against lockouts, strikes or any other course of involuntary or unnecessary unemployment and to fix penalties and make any other reasonable or necessary provisions to carry out the purpose of this amendment.

Mr. Bodfish: I rise in the interest, as I conceive it, of the great mass of our people, who are neither large employers nor employees of the big industries, nor members of the labor organizations.

Mr. Pillsbury of Wellesley: May I ask my friend from Barnstable to give way a moment while his amendment is read again? It is exceedingly interesting, and I do not think all the delegates heard it, and I did not quite take it in myself.

The Secretary again read the amendment offered by Mr. Bodfish of Barnstable.

Mr. BODFISH: I rise, as I say, to speak in the interest of the great mass of our people who are neither large employers nor members of labor organizations. While our employers constitute a powerful class, and while the members of organized labor also constitute a powerful class, they are numerically small, a very small porportion of our entire people. It seems to me that in these discussions the interest of the entire people should be considered first. I will not mince words; I will come directly to the point.

In the latter days of his life Abraham Lincoln said: "It is strange that any man should dare to ask the assistance of Almighty God in wringing bread from the sweat of other men's faces," yet in all ages and among all peoples this has been done; it has so happened that many have labored and have been deprived of the fruit of their labor; while many without labor have enjoyed the fruit of the labor of others. "This," Lincoln said, "is wrong and should not continue." Yet it has continued, we all know. He also gave expression to the fear that the day would come when the inequality in wealth would threaten the very foundations of our liberties. He saw, as all who will can see, that as a result of human imperfection and a growing complexity in our industrial situation, it was becoming more and more impossible to get a proper distribution of the fruits of labor. The capitalists themselves recognize this when they speak of standardization. The members of trade-unions recognize it when they attempt to fix arbitrary wage scales.

Notwithstanding these difficulties, this Nation has achieved wonderful industrial development, more wonderful perhaps than has been shown in any other part of the world, due, I think primarily, to the wealth of our natural resources, and, secondarily, to the impetus of individual initiative. Great enterprises, like transcontinental railway systems, vast undertakings in the mining and lumbering regions, and big milling projects, of course all require large combinations of capital, and with those large combinations of capital has come power; with the exercise of that power has come abuse, such as the black-list and the lockouts. To meet this abuse labor has been compelled to organize, and with the organization of labor there has also come power, and with the use of that power there has come abuse, such as strikes and boycotts.

Now, we have attempted to cope with these large combinations of capital through anti-trust legislation and regulations of various kinds. To-day, in this Convention, we are confronted with the demands of organized labor, which, unless curbed, will invade our rights farther than organized capital ever has dreamed of going. When either of these great combinations declines to settle its disputes with the other, all of us are subjected to the peril and suffering which follow in such a case; as in the great coal strike of 1902, which none of us can forget, where a few hundred captains of industry, on the one side, and a few thousand members of organized labor, on the other, threatened the entire Nation with freezing.

It seems to me that these things deserve careful consideration and that they should not longer be tolerated. Shall we continue to require

all other people to take their differences to the courts and let organized capital and organized labor continue to appeal to force and endurance as the test of what is right? Time was when our common law recognized trial by combat, but we long since have outgrown that as a test of what is right and what is wrong. There are to-day but two exceptions, as I view it, and these are that we allow that method now in labor disputes and in disputes between Nations.

We are engaged in the greatest war the world ever has known to establish the reign of law and reason among the peoples of the earth; and we are willing, are we not, to spend our last dollar or to give our last ounce of strength, yes, to give our last drop of blood if necessary, in order to make sure that this great purpose for which we are struggling shall succeed, for otherwise government of the people, by the people and for the people will perish from the earth, and that is unthinkable. Shall we then continue to permit organized capital and organized labor to appeal to this crude and barbarous and savage method of settling their disputes, when we are requiring and demanding that even the Nations of the world shall submit to peaceful methods of settling their disputes? It seems to me that we have got to purge our body politic of this evil thing. The means are now at hand, — an amendment to the Constitution permitting the General Court to provide for compulsory arbitration of labor disputes. Let us adopt that amendment, and upon those who oppose it be the blame for further strikes, further lockouts, further unnecessary unemployment, riots, destruction of property, bloodshed, and perhaps, though God forbid it, the further impeding of the purpose of this Nation to carry out its glorious purpose of establishing the reign of law and reason throughout all the earth. I thank you.

Mr. Powers of Newton: I am very glad that the gentleman from Barnstable (Mr. Bodfish) has offered the amendment in support of which he has just spoken. I have been fearful that this debate might be completed without any consideration of the question which has been submitted through the amendment of the gentleman from Barnstable. I desire to discuss for a short time this morning this question of arbitration. I approach the subject with no hostility toward the cause of labor, or even organized labor. I have been what I call a laboring man all my life. In the early days I performed manual labor, and I was under the delusion that there was an easier way of getting a living than by working with my hands, and so I took up a profession. I want to say to you, and I want to say to all the friends of organized labor, that that was one of the great delusions of my life. I heard my friend in the first division (Mr. Dennis D. Driscoll) say that in his early years he worked in a blacksmith shop. Well, that would have been a pastime compared with the work which I did when I worked on a farm.

During the last 30 years I have been an employer of labor, and during that entire period I never have had a strike nor a lockout. I run a sort of a benevolent and philanthropic institution, called a farm, and I employ labor. I have entered into a coöperative arrangement with the labor on that farm, and I want to explain to the Convention what my system is. It may be of service in working out the problem that is now before us. By this coöperative system I give to the laborers the entire product of the farm. That is, I sell the product and

turn over all the cash I get for it, and then I turn over, in cash which I earn in my profession, as much more. That gives to the laborer the entire income from the investment I have made in the farm, and as much more, which I earn somewhere else. In that way the laborer gets the entire return from the capital invested and he gets as much more from capital invested elsewhere.

That has worked out remarkably well. During this entire period I never have had a strike. I never have had any occasion for a lock-out, and these men apparently are entirely satisfied. I pay them $5 a day. They are supposed to work eight hours a day; that is, they are supposed to be in sight of the farm eight hours every day. They do not work all the time, — a hot day like this of course they are not expected to work.

Now, in my early youth I worked on that same farm for a dollar a day, and worked fifteen hours. At the present time the laborer works eight hours a day for $5 a day, and the crop which he produces is not half sufficient to pay for the labor.

I remember some years ago hearing Congressman Cushman, who represented at that time the third district of the State of Washington, make a speech in Congress on the labor problem. He said he had been making a study of labor conditions out in his district. He had been anxious to find out what was being paid as wages on the farms. So he said one morning he took his horse and his buggy and he drove out to make inquiries. He came along to a field where there was a boy about seventeen years old working. He stopped his team and motioned to the boy to come down to the fence, and the boy came down and leaned over the fence. He said: "My boy, how much do you get a day for hoeing those potatoes?" "Well," said the boy, "if I work all day I get nothing; if I don't work all day I get hell." [Laughter.] And that was about the way we used to work in the early days when I was on the farm.

I am very glad to see the progress that labor has made. I think it is entirely right. I do not believe that the capitalists object to the improvement of laboring conditions. I think the great trouble in Massachusetts to-day is the suspicion that exists upon the part of the laboring man toward large combinations of capital. I notice one thing. The small manufacturer has very little trouble with labor. In many cases he pays the laborer less than is paid by the large corporation, and yet he has very little trouble.

Some years ago I had occasion to take an active part in the settlement of the Lawrence strike. I met the committee of organized labor, made up of twelve men and one woman, who represented the strikers of Lawrence. I sat down and talked with those people for an entire day, and I was simply amazed at their idea of what they thought capital was earning. Why, they believed that capital was earning 50 or 60 per cent upon the investment. I took the very reports that had been made up of those mill corporations and showed them exactly what capital was earning; and when that was brought out, and they believed it, — they did believe it, — there was not the slightest difficulty in settling that strike.

I assume that labor to-day believes that the capital invested in manufacture in New England from the first down to the present time has earned tremendous sums; but I am going to make this statement:

That if the capital that has gone into manufacture in New England had been put into the savings banks, receiving upon the deposit 4 per cent, it would have earned more money than it has earned in actual manufacture in New England.

The same is true of the railroads. If the money which the investors put into New England railroads had been put into banks, receiving 4 per cent, they would have been much better off to-day than through the investments they have made in the railroads. We have got to work out what may be called an understanding between capital and labor.

Take the strikes of late. What has been the result of them? Right at this point I want to ask my friend in the first division (Mr. Dennis D. Driscoll) what the attitude is of organized labor toward government ownership of these great sources of production, — whether they favor it or not. We have seen all the railroads east of the Mississippi go under the control of the government, and they went under the control of the government simply because a strike was threatened. We have seen all the great wire companies, both telegraph and telephone, put under or in control of the government, simply because a strike was threatened. If these strikes go on you are going to see government ownership of all the great sources of production in this country. You are going to see the coal fields, the great steel industry, you are going to see the steamboats, you are going to see even the large manufactures, come under government ownership.

Is it for the benefit of the laboring man that the government should own and control the great sources of production? Is it for the benefit of the American people that they should work for the government rather than for themselves? Are we to do away with what is called individual initiative, individual freedom, for the sake of having a socialistic government, by which the government owns and controls everything? The moment you get government ownership, that is the end of strikes, because you cannot strike if you work for the government without being guilty of treason.

Let me call your attention, — at least I want to call the attention of the men who represent labor on this floor, — to one case of government ownership which has continued for a long period of years, and that is of the mail facilities in this country. I recall a man who to-day is delivering me mail who was delivering letters at my office when I came to Boston more than forty years ago. He was receiving at that time $1,050 a year for his service; he is getting to-day for his service $1,400 a year. In other words, he has got an increase during that period of about $8 a year, during those forty years. That is government ownership and that is government pay. Why, it does not follow because workmen may get large wages during the war working for the government that they are going to get it in times of peace.

Now, this proposition that is brought forward by the gentleman from Barnstable (Mr. Bodfish) is a proposition to give to the Legislature authority to arbitrate strikes. I do not know exactly how it will work out. But suppose the Legislature had authority under the Constitution to require capital and labor to submit the proposition, and to decide it. Suppose they decide in favor of capital or what labor thinks is in favor of capital, will the laborer continue to work? Is there anything under our form of government by which you can com-

pel a man to work if he does not want to work? You can compel capital, because it is organized in corporations, to perform its contracts. But can you compel labor to perform its contracts?

Suppose the case of a thousand workmen who had struck, and, under this new proposition brought forward by the gentleman from Barnstable, that question is arbitrated; and suppose that the tribunal that arbitrates that question determines that the wages are right and fair, and they direct those one thousand workmen to go forward and carry out their contract. Is there anything inherent in our government by which you can compel a man to work if he does not want to work? You can compel capital to perform its contracts, but can you compel labor to perform its contracts?

I sincerely hope that there is some way by which this Convention can take a forward step in the greatest question that is going to be before the country at the termination of the war. I wish something could be worked out by which we could arbitrate these differences and prevent these industrial disturbances. I am hopeful enough to believe that our public school system, by educating men, will make those who represent capital more humane, make the men who represent labor more reasonable, and that gradually we shall work out, — not government ownership, I want that to disappear, — but that we shall preserve that freedom of initiative which has made this country great; that freedom of individuality, where it is possible for the man who starts at the very foot of the ladder to reach the top of the ladder during his lifetime.

A few weeks since I attended the services at the burial of a merchant of Boston who some sixty years ago came to this country in the steerage of a steamer from one of the countries of central Europe. When he arrived he was a boy of sixteen years of age, without money, without friends, without any knowledge of our language, depending solely for success upon his personal effort in this great country of individual freedom. When he died he was regarded as one of the leading philanthropists of Boston, and surrounding his bier were the representatives of all large public institutions who went there to do honor to a man who had reached the position of one of the leading merchants of Boston, and who by his generosity and public spirit became a leader in philanthropy, in the promotion of important humane measures, a friend of literature, a leader among men. His life is an illustration of what can be accomplished in a country where the genius and liberty of the individual are given ample opportunity. [Applause.]

Mr. Moriarty of Boston: I am sorry at this time that I have to rise in defence of the laboring men in this Commonwealth. I am sorry at this late day in this Convention that anything should happen like that which happened in this hall on Friday afternoon, — a disgrace, in my mind, to every individual man and woman who has to toil. I refer not only to the remarks of the delegate in the fourth division (Mr. Underhill), but also to the delegates who applauded him for that onslaught on labor. A number of his statements were absolutely untrue. In this assembly, during the last term of the Legislature of this State, the president of the American Federation of Labor spoke from that rostrum. The labor movement is not responsible for the headlines of the newspapers, that are controlled by the capital of this country. We are not responsible for the headlines that appear

in those papers. The American Federation of Labor, in convention assembled, to which I have had the honor of being a delegate for a number of years, never has stated, or never has had any understanding with anybody, that there shall not be strikes during this war or at any other time. The policy of the labor movement has been that they are willing that no strikes shall take place other than where profiteering is in vogue. And since this assembly adjourned on Friday, the great memorial day, when some of the delegates wanted to adjourn this assembly on account of the great victory that had taken place on the other side, we have heard of an onslaught in this assembly, on this side, against those who are on the other side. You will find in every instance that the boy who is now on the other side is the son of a working-man and not of an employer. I hold a letter in my hand that I received from a former employee of the General Electric Company of Lynn. He was in the employ of the General Electric Company when he enlisted in the service of the United States army, in the aerial division, and is now only nineteen years old. He said, in finishing up his letter:

It was surely a pleasure to me to have read in the Boston Post that a strike is now in progress at the General Electric in Lynn.

That is a place where it has been almost impossible that men and women and children could work even under fair and proper conditions. Some of the boys and some of the men have left that factory to go across the water, to fight for democracy, and somebody is criticizing them for taking the same right in that great city of Lynn.

Profiteering! The General Electric Company has got a number of plants in numerous parts of this country, and the wages, the conditions, of every other factory are a hundred per cent better than in that establishment in Lynn. Ninety-nine per cent of the work now being done in the General Electric Company is being done for the United States government. And to answer the last speaker from the first division (Mr. Powers), who asked if we believed that government ownership should take place, I answer: "Yes, by all means, to cut out the profiteer." The gentleman in the first division did not spare either the organized labor movement or the unorganized labor movement. It is very good and very easy some times to get the organized labor movement to go on strike, but I rise in defence of the men and women in Lynn who were not organized when they came out on strike, but came out even though unorganized, the same as they did in Lawrence some years ago.

But the speech on Friday was well set. It was not one of those things that jump out of the basket on a minute's notice, but it was prepared, and the speaker was the mouthpiece of the people who have been fighting against organized labor, not only now, but in years past, and his record in the Legislature will prove my assertion.

It was only a short while ago that an organization that has been against the interest of democracy for the working people sent broadcast his speech against the children of this Commonwealth.

In regard to charity, that he says the labor movement does not enter into, I want to say that we enter into charity, that we spend all of the money that is collected for charity, and we do not belong to that charitable organization that spends 75 per cent for officers and for office hire and the other, the twenty-five per cent, for charity.

Mr. Benton of Belmont: I desire to ask the delegate in this division (Mr. Moriarty) to state the organization that he now refers to. There have been insinuations here broadcast enough.

Mr. Moriarty: Not that I am afraid, but I do not believe that it ought to be put on the records. I will give the name in person to the gentleman if he wishes it and if that is not satisfactory I will make a later statement of the charity that I mean.

Mr. Underhill of Somerville addressed the Chair.

Mr. Moriarty: I refuse to yield. I am going to give the same treatment that I received on Friday.

I want to say that during some unemployment here two or three years ago I had the honor to be a member of a committee of five of the Boston Central Labor Union who collected $2,700 to give to the unemployed or the families of the unemployed, and those people received $2,700, — all that was collected. As far as charity is concerned, organized labor does not believe in charity. It believes in the employer putting enough money in the envelope so that there need be no charity. We ask for nothing but fair compensation in return for the value of our labor. And we say to you delegates here to-day that you ought to be careful. We are asking nothing but what we are justly entitled to. We are entitled to fair treatment. We are entitled to so much per hour for labor.

I do not believe that the Legislature of this Commonwealth should have the right to say that I am not entitled to 75 cents per hour for my labor, and if I do not go to work that they can put me away for any crime. If you come down to arbitration as provided in the amendment that has been introduced, that will be the link that will be put on us, and I want to serve notice on this organization that in taking that up you are only forcing upon the working-man of this Commonwealth the same that was imposed on him in Russia. A lot of you men have read how in certain parts of Russia sons and daughters were not allowed to travel without a yellow ticket. Do not make this country or this grand Commonwealth anything like that. And that is what you are going to do if you pass that compulsory arbitration resolution. I feel the measure that I have introduced here will bring labor and capital nearer together than any arbitration proposition you may now put in here. I do not believe compulsory arbitration is going to bring the employer, the Commonwealth and the employee one iota closer together. I believe that it is going to make a wider breach. If you men here, assembled, not to do a personal duty, but to do a duty to all of the citizens in this Commonwealth, carry out your intent by passing this amendment, then you will do a duty that will be against the great interest of the masses of this Commonwealth.

I hope that from this time out, while our country is at war, there will be no more onslaught in this Convention on the organized or unorganized men and women who work. I believe that after being in here since a year ago last June this is the second time that I have taken the floor in this Convention. I believe that the labor men here are as conservative as any class in here. I believe that the man and woman on the outside are likewise; but they are afraid all the time. They are afraid that inside and outside things like that which happened on Friday may happen again. I ask you, in the name of both the organized and the unorganized working people of this Commonwealth, to

pass the resolution introduced by me and endorsed by the American Federation of Labor of this Commonwealth. I feel then that we will be in a position where the employer of this Commonwealth and the employee will be brought closer together.

Mr. BODFISH: I should like to ask the last speaker, not as a partizan of labor, but as one sitting in this Convention who is a friend of labor, if he will tell us how many members there are of organized labor in the State, and if in securing shorter hours and higher wages for those, he may not be securing longer hours and lower wages for the others, especially the farmers, and if he prefers strikes and lockouts, boycotts and black-lists, to having their differences adjudicated by peaceful means, without involuntary or unnecessary unemployment.

Mr. MORIARTY: I would not want to give the number of organized people without first looking it up. I could give that to the gentleman later, and would be glad to. We believe in peaceful persuasion, but we believe that we ought to be given the right to at least do our own business without being forced to do it. My attitude, it may be, can be explained better by saying that during the first car strike in Boston, after an agreement was made between the Boston Elevated Railway Company and the street car men that in any more trouble arising between those two parties an arbitration board of three would be appointed, one by the men, one by the Elevated and one by the mayor of Boston, in about a year something did arise that they could not agree on amongst themselves. The car men refused to abide by their agreement. They said that they would refuse to allow the mayor of Boston to appoint the third party. I had the honor of being the president of the Boston Central Labor-Union at that time, and I issued a statement to the newspapers that either the car men would agree to live up to that agreement that they had made in good faith with a State official and the Boston Elevated Railway Company, or I, as the president of the Boston Central Labor-Union, would instruct the labor men in Boston to give them no support. And that statement can be found on the front pages of the Boston newspapers at that time. In answer to the brother in the first division (Mr. Powers) organized labor agrees to an agreement, organized labor agrees to live up to an agreement, but individuals in our movement are allowed to drift by just such joker legislation as this.

I want to say that I have represented my international organization on many occasions. During this war I have been in Washington. I was in Washington only last week and sat down with the War Policy Board to see if it is possible for the government to lay down a policy where there shall be no strikes. But this is the condition: In the Fore River shipyard an agreement was entered into between organized labor and the United States government, — I want to change that, not an agreement, a memorandum, — and we agreed with the ship board, with the wage adjustment board and with the officials of the Fore River. One part of that said there would be no money taken from the employee for insurance, for doctor bills, or for any other purpose. The officials of the Fore River shipyard were at that hearing. For the last two months Fore River has taken from the envelopes of the employees employed in those two yards, at Squantum and Quincy, an insurance, against the agreement made and entered into both by organized labor and by the government. The

men are standing loyal, with the assurance of the leaders, or so-called leaders: "Stay at work, and we will try to bring about a settlement."

I could stand here all day and tell you about what labor has not received from the way that I see it, but I do not like to take up the time of the Convention. I say that one thing that organized labor does not want is compulsory arbitration. They believe they should have a right, a just right, to sit down and make their own bargain, without being forced there at the point of a gun.

I am going to conclude by giving one illustration in regard to the injunction, and maybe I have had as many injunctions served on me as any member of the union. The only thing that I have said when injunctions have been served on me was: "Well, the employer will pay for my dinner anyway, because when the injunction is received we will receive $2.25 or $2.50 with it." We realized before going into court the injunction, temporary injunction, was going to be granted, and in 99 per cent of the cases in our Commonwealth the injunction was granted before we went into court. After the injunction is granted it forbids me from going to that place of employment, to any man or woman, and saying to him or to her: "I can furnish you employment that is better in wages and better in conditions than what you are receiving here." If I go there, and if it is known, I may be brought into court and sentenced, without trial by jury, for contempt of court. But I may do this: I may go out and wait for that man until he leaves his place of employment, I may hit him over the head with a piece of iron pipe and injure him so that it will be impossible for him to do labor for that employer to-morrow. Because I am technically assaulting instead of using persuasion I will be given a trial by jury for almost committing murder and will be sent away for using, — persuasion. Do you say that that is fair? Then I say to you: Pass a measure that is not identically like mine, but making the injunctions closer. Give the Justices of our courts even more power than they have at the present time.

I remember one incident. There was a strike on the Hotel Plaza, and the George A. Fuller Company, one of the biggest contractors in this Commonwealth, called every subcontractor into its office on State Street and said to them: "Go to the courts and apply for an injunction against every representative in the building trades," threatening that if they did not they would never do any more work for the George A. Fuller Company. I remember the trouble distinctly. The trouble was all about a man who since has passed away. I remember Judge Pierce's words to the man who applied for the injunction: "I have realized that you have been a puppet, that George A. Fuller has said to you jump and you jumped, and he said to you lay and you layed. I therefore don't grant you the injunction, but do grant it to the George A. Fuller Company." He might just as well have given it to the man who he claimed was a puppet, because he was the man involved in the trouble, but he gave it to Fuller, to protect everybody but the employee. After a time they brought men here from all parts of the country to take our places. Six policemen and a sergeant walked from the building to their rooming-houses on Columbus Avenue, and we did not even have the right to tell those men of the trouble that they were in or that we were there, because we were en-

joined from talking, interfering, doing anything in regard to that job. I remember that in a case of an injunction in Worcester men were not allowed to walk on the same street that the plant was on. Some of the men lived on the same street, and they had to jump over their back fences to get into their houses or violate the injunction.

Mr. CLARK of Brockton: It had been no part of my purpose to add anything to the already full and somewhat acrimonious debate on this important matter until the delivery of that noble effort, oration, on Friday last by the member in the fourth division from Somerville (Mr. Underhill), featured, as it was, by invective and diatribe, that makes the orations of that great Grecian in his Philippics seem like tame reading. But, gentlemen, I am not altogether certain but that it is well that every word has been said that was uttered by him and that has been spoken by every other member who has had anything to say on this subject.

After studying the matter over Saturday, and I confess I thought of it on Sunday and Monday again, I have come to consider it when studied in all its breadth and its depth as one of the most important questions that we have had to consider in this hall since we assembled more than a year ago. It is fundamental. It is fundamental to the conditions of this Commonwealth and of this great country of ours, and the truths that have been enunciated by different individuals, not only by the gentleman from Somerville (Mr. Underhill), but by others, are especially pertinent at this time.

Reference has been made by more than one speaker to the noble boys whom we have sent overseas till we have considerably more than a million over there now. Several hundred thousand of them have been standing with their backs to the wall, fighting, falling wounded and dying, and calling from day to day, from week to week, for you and for me and for every other man and every woman left at home to send more men, more guns, more ammunition, more clothing, more food, that they may successfully wage that contest against the enemy of humanity, civilization and democracy. Hence I say I regret that at a time like this, when the power of every man and every woman is absolutely needed, there should be anything to disrupt labor conditions, anything to disturb, anything to cause the loss of man power. Not only are our boys doing everything that human power and human ingenuity and human skill and courage and bravery can do across the seas, but our wives, our mothers and our sisters are arising at early dawn, preparing the morning meal for the family; and after they have done that duty they walk a mile and two miles to the Red Cross centers, there to prepare bandages and dressings for those boys. They work till nearly night. Then they go home and resume the household duties. That is what our women are doing.

Certainly our men should be interested in this great problem, and I do regret most keenly that at this time not less than 30,000 able-bodied men in the New England States alone are away from their usual places of work and labor by reason of labor disturbance. But, gentlemen, I am not going to offer at this time any excuse for these strikers. I am not going to justify them. The thing has taken place. But it is our duty as men sent up here to study the vital questions that interest this Commonwealth and this Nation to-day to take hold of this matter and study it to its very depths, and I hope we will do

it. I hope the previous question will not be moved on this until its depths have been fathomed, if it takes all this week to do it.

But there are others besides these strikers, gentlemen, who are doing nothing to aid in saving the cause of humanity. Pardon me if I divert just a little, because this is incidental, if not absolutely pertinent. In the United States to-day a quarter of a million able-bodied men are engaged in the manufacture and the transportation and the sale of alcoholic liquors. These figures come from the liquor men themselves. A quarter of a million!

Mr. DENNIS D. DRISCOLL of Boston: Is alcohol used to make powder?

Mr. CLARK: Yes, sir, and it is used to make sots and slackers also, and to incapacitate men for work. It incapacitates one-half million of men in this country every day for any effective service. That, with the quarter of a million, makes three-quarters of a million who are incapacitated by this one thing. I am making this statement at this time to show that the striking union men in this Commonwealth and in New England to-day are not the only ones who are hindering in the manufacture of those things which are essential to the progress of the country and to the success of our arms in Europe. The Commonwealth of Massachusetts itself, the government itself, is culpable in this matter, and I am not altogether certain but that this Convention is somewhat culpable in throwing over the proposition to present a prohibition amendment to the voters of this Commonwealth. I am not altogether certain about that. I mention this incidentally to show before I get through with this how large a number of our able-bodied men are not engaged in anything that goes to serve the cause of humanity. Why, we were told last winter, and I believe it was absolutely true, that the breweries in the city of Boston alone, when the churches were closing, when the schools were completely closed, consumed more coal than all the schools of Boston consumed and destroyed, more foodstuff than all the school children in Boston consumed, and one of the Boston papers stated that more than 25,000 of the Boston school children went to school every morning without having had a suitable morning meal.

Mr. RICHARDSON of Newton: I rise to a point of order.

The PRESIDING OFFICER: Will the gentleman state his point of order?

Mr. RICHARDSON: We have a large question here on this labor matter, sufficient to take up the time of the Convention if it is not diverted from that subject. My point of order is that the gentleman's remarks are not pertinent to the question.

The PRESIDING OFFICER: The gentleman from Brockton will confine his remarks to the resolution before the Convention.

Mr. CLARK: I feel very strongly that I am confining my remarks to the main question and to those questions that revolve around it as satellites and are intimately associated and connected with it and must be taken into consideration with it before this great and fundamental question is settled fully and before labor gets its just deserts. I am with labor first and last, from the top to the bottom, but I am with it to do it the good that I believe it needs done. I am to save it from its own self if it needs it in some directions and some respects. That is all I have to say in regard to this liquor matter.

A word about the origin of the labor-union's strength. I think the speaker on Friday last and some others have intimated, if they have not declared emphatically, that the labor-unions themselves were responsible for their strength, and that the strangle hold which it is claimed by some they have on the manufacturers was forced upon the manufacturers. I know absolutely to the contrary. A few manufacturers, desiring to get an advantage over their fellow-manufacturers, and a few union leaders perfectly willing they should if they would pay the price, got together, devised a scheme whereby a manufacturer should employ union labor alone, and as the price for doing so he was to be guaranteed immunity from strikes, arbitration was to prevail. I know that some of those manufacturers exulted in their shrewdness, — in their cunning, as they considered it. But a little later, when I was in the Legislature, one of those manufacturers came to me and said: "The Legislature seems to be under the influence of the unions." I replied: "Possibly it may be to some extent, but not so very long ago you were pleased to be under the influence of the labor-union leaders, and you invited them to come to your office and make a contract with you whereby no non-union man need ever hope to find a place in your employ." He stroked his whiskers and he said: "Doctor, I don't know but there is too much truth in what you are saying." I answered: "You know there is." Yes, gentlemen, the manufacturers are responsible themselves for this strangle hold, if it be a strangle hold, that the unions have upon them. The unions are not wholly responsible for this.

Are the laboring men as a rule getting a sufficient wage for these times and with the high cost of living that prevails to-day? The unskilled workman who leaves my city in the morning, goes down to Squantum or some of those surrounding places there, works eight hours, returns at night, continues that through the week, — the unskilled workman, one of those men whose name the gentleman in the fourth division (Mr. Underhill) on Friday said he could not pronounce, — well, I cannot, it is not necessary that I should, he is a workman, he is doing work here, he is helping make those things that will help our boys overseas, — is getting between $30 and $40 a week for his work, wholly unskilled. What about the man who has spent years of time in securing skill in the use of his hands, and whose mind becomes trained so that he can step up to a machine and do a day's work, earn for his employer $12, $15, $20 during the day, — I do not know how much? What about the $20 a week that he gets? Will it pay his house rent, his fuel bill, his grocer's bill, his clothing bill, and pay into the church, of which he should be a member or in which he should be interested, a pittance once a week? Out of $20 can he do it? I say no, if he has a family of three or four children and a wife, and desires to maintain that standard of American living and American citizenship that you and I want every man, wherever he may come from, whether it be from the sunny land of Italy, from the Emerald Isle, from the cold regions of Russia or anywhere else, to maintain in this land of ours. Can he do it? No. When he finds that he is short of money to pay his honest bills, and he finds that manufacturers are becoming millionaires over night, — yes, gentlemen, almost over night, there are manufacturers who were on the ragged edge and just ready to go into the receiver's hands two years ago who to-day are million-

aires, — do you wonder the laboring man who has wrought for one of those men, helped to make him a millionaire in this short time, is restless, is uneasy? I am not now justifying the strike, do not misunderstand me, but I am endeavoring, in my feeble way, and I recognize that it is a feeble way, to impress upon this Convention the fact that the present conditions cannot continue and American freedom be lasting. It cannot.

There is a grave responsibility upon us here, and I hope we shall measure up to it. The gentleman in the fourth division (Mr. Underhill), as I remarked, rather decried some of these strikers and these labor men because we could not pronounce their names. They cannot pronounce my name; I do not feel hurt because they cannot. I do not feel that they are any less worthy of my consideration because they cannot pronounce my name or because I cannot pronounce their name. This government has swung wide open the gates to every foreigner, from whatever land he might hail, with one or two exceptions. They have come here to be American citizens. They have built our railroads. They have dug our canals. They have erected our ten, twelve, fifteen, twenty story structures in our great cities. And, gentlemen, when it comes to their children in our public schools we Americans are not up with them. They have a deeper interest. They are bright. They learn more rapidly, and in a few years, when our children's children come onto the stage of action, those foreign children's children will be in the lead and will be shaping the destinies of this Commonwealth and of this great Republic. Do not deride them. Do not crowd them into the background. Do not crush them beneath your heels because they cannot pronounce your name or you cannot pronounce their names. I recognize the fact that they were formed by the same creative hand, and I am ready to stretch out my hand and welcome them to a higher plane of living, a higher plane of thought and purer and nobler aspiration in this land of God-given liberty and freedom.

However this question may be decided to-day or to-morrow or later, this question alone, gentlemen, will not solve the problem. It is not enough. It does not hit the real core of the situation. Never until the laboring man has an interest in his work more than just that envelope and its contents on Saturday night or Saturday noon will he take hold of the work like the proprietor. I wish the man might be living to-day, I hope he is living, who can devise a scheme for settling this great question upon just and equitable principles for stablizing labor. The only thing that I think of, and it has done it in cases in the past, it has done it in connection with the great gas company that furnishes London with its lighting and much of its heating in the past, is the coöperative system. Just as soon as that coöperative system was put into operation every employee became a proprietor, he became a part owner, he became interested, and that company began to prosper as it never had prospered before. The price of gas was lowered to the consumer, and at every dividend period every employee in that company received an interest, a greater interest and still a greater interest as time went on in that company. I wish that might be tested, tried out more fully in this country than it ever has been before. [Applause.]

Mr. Whipple of Brookline: I hesitate to intrude upon a discussion

where there are so many members of the Convention so much better prepared to discuss questions at issue, but last week there was uttered in the progress of the discussion on the floor a statement and a sentiment from which I wish to register my emphatic dissent and record my distinct disapproval. I do not know whether you all caught what was said or appreciated and realized the full significance of it. Because I did not hear it distinctly, but caught only the general import I asked to have it transcribed, that I might be sure that I heard exactly what was said. You will remember that in the course of that friendly and intimate discussion between the gentleman from Brockton (Mr. Brown) in the second division and his friend the gentleman from Wellesley (Mr. Pillsbury) in the first division there was a reference to the Clayton Act, and this is what was said by the gentleman from Wellesley (Mr. Pillsbury):

The Clayton Act begins with this recital: "Human labor is not a commodity or an article of commerce," and that self-evident declaration, one of the most preposterous things ever written into a statute, even in the American Congress, which is a large claim, was put there solely to introduce one of the most despicable pieces of demagogism ever written into the Federal statutes, in an exemption of all labor organizations —

Mr. PILLSBURY of Wellesley: I rise only for the purpose of correcting the quotation of my own language which my friend has read and I presume is not personally responsible for. He has quoted me as saying that the first sentence of that section of the Clayton Act is a "self-evident declaration," as I presume he read it from the paper before him. What I said was that it is a self-evident lie.

Mr. WHIPPLE: Very well, I will accept that, and we will read it in that way, although it has no pertinence to the part of the declaration to which I wish to enter, register and record my dissent.

One of the most despicable pieces of demagogism ever written into the Federal statutes in an exemption of all labor organizations and all agricultural organizations, the working-man and the granger, from the charge of conspiracy under the Sherman Act.

That was the statement, and that was the charge. I will pass by the reference to Congress, because it is a matter of taste, perhaps, whether one desires to refer to that great National law-making body in those terms; but I direct attention to the remainder of the statement, that this act, or this exception, excepting labor organizations and farmers from the operation of the Sherman Act, was one of the most despicable pieces of demagogism ever written into the Federal statutes.

Do you, gentlemen of this Convention, desire that to go on record without a protest? I protest because that is a charge of betrayal of trust, made against the men, the Senators and the Representatives in Congress, who voted in favor of that measure, and a charge of betrayal of trust against the President of the United States himself. And I do not believe that those men, believing that the measure was against the best interests of this Nation, still voted for it or approved it to get votes. Is not that a charge of betrayal of trust, — the men who approve or who vote for legislation that they do not believe in, — do they not sacrifice the interests of their country and of their constituents for private gain, for private advantage? That is the charge which was made, a charge which I resent, because I believe in the

men who passed the bill and I desire to record my confidence in the uprightness and the integrity and the honesty of Woodrow Wilson, who approved the act and assisted it through. [Applause.] But I desire to record my disapproval of the statement most of all because I believe that the legislation itself was a measure of justice, a measure of fairness, a piece of progressive legislation which was an honor to the men who proposed it to be enacted.

Why do I say this? Look for a moment at what the provision is. Article 6, section 6 in the Clayton Act provides —

> That the labor of a human being is not a commodity or article of commerce. Nothing contained in the anti-trust laws shall be construed to forbid the existence and operation of labor, agricultural, or horticultural organizations, instituted for the purposes of mutual help, and not having capital stock or conducted for profit, or to forbid or restrain individual members of such organizations from lawfully carrying out the legitimate objects thereof; —

which, translated, means nothing more than that the Sherman Act should not forbid the existence and operation of labor organizations with all their beneficial and advantageous results, or from their securing by lawful means the promotion of the interests which they were organized to secure. [Reading]:

> — nor shall such organizations, or the members thereof be construed to be illegal combinations or conspiracies in restraint of trade, under the anti-trust laws.

What did that act mean? What was the history which led up to it? Well, we have to go back a bit to the passing of the Sherman Act, which was the first anti-trust law. What was the purpose of that act? What evil existed in the body politic which it was desired to crush and weed out? Was it not this, — that the aggregations of capital throughout the land had become oppressive? Oppressive to whom? Oppressive of the people, but especially oppressive of the laboring classes and the farmers, the producers of the world. It was felt that the farmers, who produce, were not getting a fair share in the distribution of what they produced, and that the laboring men were not getting a fair share of what their labors and their efforts produced, but that after the production was made food gamblers and speculators seized upon the products and by numerous combinations, by rebates and every other device then known, acquired the greater part for themselves. And so for the protection of the people at large, and especially for the protection of labor, which was suffering under discrimination, for the protection of the farmer, who raised the produce and who did not gamble or speculate in it, the anti-trust act was passed, and subsequent acts were passed perfecting it. That was the object of the Sherman Act, — to prevent illegal conspiracies, as they called them, which wrung from the pockets of the people illegal gains, took from labor a greater part of what it produced than they had a right to take, took from the farmer a greater part of the value of what he produced than fairness and justice permitted them to take.

But what happened? It was a broad act, loosely drawn in general language. Immediately distinguished lawyers, who always can see how to do that sort of thing, said: "Why, here is a chance; let us apply the law to the laborers themselves and to the farmers themselves and see how they like it. Under its general terms we can root out labor organizations, which are troublesome to us because they are doing something for labor, and these organizations of farmers who get

together to talk over matters about their crops and to see how they can get a cent a quart or half a cent a quart for milk, — we can give it to them." And therefore the Danbury Hatters' case came on and went to the Supreme Court of the United States, where judgment was given taking away the homes of hundreds of working-men there in Danbury, because the Supreme Court had to say: "As the act is drawn it has to apply to labor organizations." Therefore the bill that was passed for the protection of the farmers and the protection of the laborers was turned by that quick thrust as a weapon against them.

That was the situation. When there came into power the men who passed the Clayton bill they said: "It is the part, it is the duty of legislators to take care of, to give especial advantages, if you please, to the men who toil. They cannot send expensive lobbies here to Washington to tell us what they want, and the farmers are not represented in the legislation." To apply the words of that great President, these legislators said: "We know very well what the financiers and the bankers and the great railroad presidents want, and we do not need to have them tell us. We would give more to know what the man on the street wants, what he thinks, how he feels and what his problems are, — the laboring man and the artizan." And so here, despite a lobby, there was brought up a measure which I say was a measure of justice, a measure intended to correct the broad language of the Sherman Act and restore to the protection of legislation the men for whom originally the legislation was intended. And therefore there was written into that law that it should not apply to farmers' organizations which never had done harm to the public, which never had got very much of a rebate, which never had piled up very greatly swollen fortunes; that it should not apply to the humble workingman's organizations whose activities had not done very much harm to the community, which had been directed to lifting just a bit the status of his life, giving him a little more of the product which he assisted in producing. These lawmakers said: "We will not stand by and see what was intended as a protection of those classes used as a weapon against them." And so as a measure of justice and fairness, as a measure of progressive legislation, as a measure making the Sherman Act what it originally was intended to be, that clause of the Clayton Act was passed.

Was that one of the most arrant pieces of demagogism that ever has been known in this country? Do you want to say, gentlemen of this Convention, that it was, and assent to that proposition? I for one will not assent. It is legislation of which I approve; it is forward looking, progressive legislation, legislation in the interests of the people at large.

It has been said that the measure before us and that measure are "class legislation," as if that settled something. Well, does it? What is the objection to "class legislation"? Do we not have a lot of it? Recently a law has been passed that gentlemen without employment, — loafers, — must work. Is not that class legislation? Does not that hit a large body of people of a particular class, namely, those who do not work? That is class legislation. Why did they pass it? They passed it because they wanted to discourage the pursuit of that particular class of individuals. It is class legislation to say that a man

who habitually commits crime shall be put in jail or punished. In a certain sense it is class legislation. It certainly is class legislation when a lot of manufacturers go to Washington and ask for special privileges under the tariff. Why do they ask special privileges? "Encourage our manufactures; encourage us as a class." They say: "Anybody can go into it." That is very true, anybody can. Anybody can become a laborer, anybody can become a farmer, and this legislation was merely legislation to encourage two classes, — to encourage laborers to try to better their condition by the methods which they use for bettering them; to encourage farmers to consult together and try to better their condition. It is class legislation.

The measure which is before us now has been said to be class legislation; that is, that the particular class of men, labor organizations, shall be exempted from certain restrictions. Whatever other objections there may be to it, — and there are objections, — the objection that it is class legislation is not a sound one, because it represents a policy, and a correct policy, as exemplified in the Clayton Act, and that is this: A policy to encourage agriculture, to help agriculture, to build it up, encourage people to go into it, because without agriculture where are we? Do we realize that through agriculture and through the labor of those who work in the mines and in industries practically everything we have comes to us? Is it wrong policy to encourage them when they have been ground down and legislated against and discriminated against through a long period of years?

The time has come when the government of the United States has taken in hand the upbuilding of certain classes, the favoring of certain classes, to encourage them; and the classes that it has undertaken so to help are the humbler classes, the laborer, the toiler and the tiller of the soil. This principle should be applied to the measure before us. Is it for the real benefit and in the interest of labor organizations and the laboring classes? If it is it should have our approval. If it is not it should not have our approval. By that test the question should be determined. Do they deserve the encouragement, this particular form of encouragement or this particular form of exception? I must confess I am not certain that they do. I am not certain that it would be for the interests of labor, although I must admit that the men who have fought labor's fight and endured the struggle are better able to judge than I with reference to it, and they have considered it carefully. But it seems to me that the measure which they ask for is fraught with danger to them. But that something should be done, that they should be encouraged and should be helped, should be the policy which should guide the action of the Convention upon this matter. [Applause.]

Mr. PILLSBURY of Wellesley: We are at a critical stage of a very important debate and I wish first, as we shall have to vote shortly on two or three questions, to call the attention of the Convention to the parliamentary situation, so that at least there may be no confusion about it. The resolution before the Convention is No. 220. It goes almost without saying that this resolution must be rejected, whatever becomes of any substitute for it, for it is a literal transcript of the whole statute of 1914 which was held unconstitutional by our court in the Bogni case. The mover of the resolution has taken over bodily the whole Act of 1914 and proposes it for adoption here as part of the

Constitution. For reasons of form, if no other, that is not fit to be written into the Constitution and for these reasons it must of necessity be rejected unless it is at least boiled down into constitutional form and substance.

For this resolution two substitutes are offered, one by my friend from Boston who sits directly behind me (Mr. Horgan). He now tells me that it is not to be pressed, so I need not comment upon it. The only pending substitute, then, is the resolution moved by my friend from Barnstable (Mr. Bodfish), and I desire to say at once that nothing could have gratified me more than to see this proposition come from a gentleman for whom I have high respect but with whom I have very often found myself unable to agree. Upon this measure I am in hearty accord with him, and I can tell the Convention what I think about it almost as well in a minute as I could in an hour.

I believe that if this Convention had come here in June, 1917, written that measure in some form, — I am not committed to its precise form, which I think may need revision, — if the Convention had come here a year ago and written that measure into the Constitution and then adjourned and gone home, it would have proved its worth to the people for all it cost and would have been entitled to the public gratitude.

I doubt very much if all the members of the Convention appreciate the momentous importance of this subject to the people of Massachusetts. There is not another State in the Union, with the possible exception of our neighbor Rhode Island, which is in much the same situation, nor perhaps another community anywhere, that is put in so difficult and dangerous a situation by industrial warfare as this community in which we live. Massachusetts is an industrial State, and so she must remain. A vast proportion of her population, probably a majority of all the people of Massachusetts, depend upon industrial employment for their existence, literally for their daily bread; and to the welfare and prosperity if not the existence, of an industrial community like this, industrial peace is a vital necessity.

Now for more than a generation we have been standing by and looking on helpless at the war between labor and capital, which has disturbed the public peace, unsettled industry, wasted untold time and money, driven some of our industries out of the State and threatened the stability if not the existence of those which remain, — and why? Because we have no tribunal possessed of power to take hold of industrial disputes in the right way and straighten them out. That is a principal if not the ultimate reason. The courts, proceeding upon fixed principles and under rigid rules of law, have found themselves unable to do it. They have succeeded in paring off some of the sharpest edges of the controversy. They have succeeded in protecting independent labor in some of its rights and, so far as I know, in protecting organized labor in all its rights if denying it some special privileges which it demands. But the courts cannot go to the root of the difficulty. It is beyond their reach. There must be an arbitral tribunal with authority to take these contending parties in hand, in the broadest view of all the social and economic questions involved, deal out equal and exact justice between them, and enforce its awards. In other words, we must have a competent arbitral board or boards as the only practical remedy in sight for the warfare between labor

and capital and the only thing that offers a prospect of securing industrial peace in this industrial community.

I take the resolution of my friend from Barnstable, though I have not had time to examine it critically, as embodying the substance of compulsory arbitration. There is or was before the Convention a form of resolution submitted by a majority of the joint committees on Labor and Judicial Procedure, which we hoped would so far commend itself to favor that some member would bring it up formally for action, but that has not been done. The proposal of my friend from Barnstable contains, probably, all that is necessary in substance, and I sincerely trust that the Convention will substitute it for the pending resolution, so that it may at least be further considered.

I do not believe the Convention has before it another measure out of which so much benefit may come to this industrial community as out of this if properly recast and put into the Constitution. It opens the way, which at present seems barred in all directions, to a rational and practical remedy for the adjustment of industrial disputes. I am aware that the word "compulsory" has an offensive sound in some ears, perhaps in all ears, because no man likes to be compelled to do anything against his will. But I think our friends of organized labor are making the mistake of their lives in standing out against compulsory arbitration, which is sure, in my judgment, to come. I think they are mistaken for the plainest of reasons, namely, that if there is any ground for their position or their claims, — and I admit that there is and have no criticism to make upon them except that I think they are self-deceived, — all they want and all they can ask is equal and exact justice, and this if not more they can confidently expect at all times and under all circumstances from such a tribunal as the Legislature is authorized by this resolution to create. They cannot in reason ask more than this. They are asking for special privileges, and that is their fatal mistake, — the mistake which in the end is bound to undermine their whole position, exactly as illustrated in a remark of that most liberal if not radical judge, Mr. Justice Holmes, which I have seen quoted in some newspaper: "I said to a labor leader: 'What you want is favor, and when you are denied it you say that the denial is wicked.'" Neither organized labor nor anybody else can maintain that position in this country, where the majority of the people believe in equal rights and equal opportunities alike for all men.

The resolutions which we are debating now for the third day are fatally defective, every one of them, because they ask special privilege for organized labor. They ask that the legal remedy which is open and applied against everybody else shall not be applied against them. They ask to be exempt from the only effective remedy against that which is unlawful in their operations. It is for this reason that the majority of the Convention has already seen, instinctively, that the idea of writing these resolutions or either of them into the Constitution cannot be entertained. All men must stand on the same ground in this community, and it shall not be said in our Constitution that one class of men may defy the laws and go free of the penalties which fall upon all other men or classes under the same circumstances.

I said that I could tell the Convention in a minute all I desired to say about this resolution, and I think I have done it, but perhaps I

ought not to sit down without acknowledging the compliment of my friend from Brookline in the fourth division (Mr. Whipple). If I felt at liberty to say anything here which is not chemically pure from all taint of anything political [laughter and applause], I should avail myself of the occasion to express my obligations to my friend for furnishing the voting body of Massachusetts, in advance, with the platform on which he may one of these days be really, as he is at all times nominally, a candidate for a seat in the Senate of the United States. [Laughter.] He has unequivocally declared, let it be remembered, that he is totally and absolutely in favor of legislation, — so much in favor of it that he protests against a word being said to the contrary, — of legislation which singles out and exempts two classes of the community, the classes having the most votes as it happens, from the penalties of the Sherman Act, which is primarily and principally a criminal statute. He declares that he is unequivocally in favor of setting apart two classes of voters to be exempt from the punishment inflicted by the anti-trust acts upon all other men or classes under the same circumstances, and of making it the law that, whereas all other men who conspire or combine in violation of these acts shall go to jail, when these two classes do the same thing they shall go free. This is class privilege, in its most odious form. I feel greatly indebted to my friend for that candid declaration and welcome him to the full benefit of it. [Applause.]

Mr. HARRIMAN of New Bedford: I have just heard the labor movement charged, — because we want things arranged so that the burden shall not lie so heavily upon us, — with being willing to commit crime and with asking that if we do commit crime we may go free. I want to say now that when the gentleman in the first division (Mr. Pillsbury) talked of independent labor, there is no such thing upon the face of the earth as independent labor; only those who stand together in an industrial organization.

I shall not detain the Convention any length of time, but I want to say again that when a man says because I stand among you and raise my voice for a square deal that I am asking for protection if we commit crime, we do not want any such thing, my friends, and the gentleman in this division makes my blood boil when he says labor is demanding selfish, class legislation. We are asking you now and I want to ask the gentleman who has just taken his seat this question: When he started out he said that this resolution No. 220 could not be in the Constitution of Massachusetts because it was the Act of 1914. And I ask you why it cannot be there if the majority of the people in this Commonwealth want it there? His say so does not make it right, neither does it make it wrong. You men, many of you lawyers, ought to go out into the highways and byways of this State and listen to the people upon the street, listen to them in their halls, and you will find, whether you believe it or not, that there is no organization that the people are so bitter against, that they speak of with so much severity, as they do with reference to the courts when they interfere with the enactment of legislation passed by the Legislature for the benefit of the people. Now you men may not believe that, but it is absolutely true. Pass a measure of remedy in your Legislature and go into any city or town in this Commonwealth and ask the average man on the street what he thinks of it, and he will tell you:

"It will last till it gets to some court." They have no faith in the courts when it comes to these things. I have heard a judge in our court say that he did not want to have anything to do with these industrial problems. And so, as I said the other day, the only cure for this is to take from the courts the power to annul legislation. Take from them the right to pass on legislative acts and leave it in the hands of the people; allow it more freely under the initiative and referendum, and you will remedy these things. Water will seek its level, but no living man is willing to have the chains placed upon him. Industrial arbitration, — compulsory arbitration? A man this morning said the mill people did not make any money, they were surprised at the small dividends. The Lawrence strike, — why was it? It was because the men who controlled that industry refused to obey the mandate of the law of this Commonwealth without reducing the pay. That was the reason for the Lawrence strike. And while the outward conditions may be still, the strife is still there. In the city of New Bedford we had a strike during war time and all the people walked out. Now let me tell you, most of those people down there do not belong to an industrial organization. It was rebellion against the entire system that allowed profiteering and the cost of living going up beyond all range, and those people walked out. Who settled it? Oh, it is nice to stand here and be able to say that the man who settled that industrial strike for New Bedford and the man who came there helping the government was the man[1] whom the ex-Governor would have been glad to place upon the Minimum Wage Commission of this State and he was opposed by the capitalists of this State who declared him unworthy of the position, and yet he was qualified to settle the dispute for the government with the mill operatives which meant thousands of dollars going to the mill operatives but also meant supplies without number to those who are fighting our battles. I stand for that, not because those of my political faith but because this administration has gone out into the highways and byways and brought men of that caliber in to deal with labor.

Let me say, you working people have a right to organize, and you are denied by injunction and you are denied by every known purpose and it would be well for some of you who apparently may be interested in compulsory arbitration to find out that it has not worked in other places. You cannot have industrial peace, — it is a misnomer. I go further. Labor and capital never can walk hand in hand together under a competitive system which says the strong shall survive and the weak may perish. It is incompatible with those two extremes. And so I plead with you. I do not want to force myself on this Convention, but I tell you candidly that you cannot cure it, — you will not cure this evil by placing further restrictions upon it.

The Clayton Act gives a fair administration of the law. Do away with your injunctions and let us settle it. There is not a man here who is not willing to allow himself to be judged by a jury of his peers, and that is what we ask for. I am not asking for any judge or anybody else to go to work and declare an injunction as they did in Boston against the carpenters, refusing them to even say to a certain firm that it should not retain in its employ a man who was unfair to them, refusing them the right to print upon a card that a certain

[1] Prof. W. L. Ripley.

firm was unfair to these people, despite the fact that the Constitution of Massachusetts allows the right of free speech.

Let me close with this: There is a law to protect against criminal action, and if these things be criminal proceed under the law. Ah, my friends, — and particularly the lawyers, — let me say to you, do not think for a moment that if you dodge this question and if you do not meet it fairly and squarely you have in any way evaded the issue. The delegate in this division (Mr. Pillsbury) has said that all peace and serenity would have been in this Commonwealth had there been compulsory arbitration. Do you believe it? Do you believe you can force any man to do what he does not want to do and have peace? I can conceive of a state where the interest of the many is regarded as higher than the interest of the few.

Mr. Bodfish of Barnstable: I should like to ask the gentleman if he would oppose the passing of any law because we cannot enforce it perfectly, because somebody may violate it?

Mr. Harriman: Certainly not. But I want to say this: It is unfair to say that labor in itself must knuckle down to some arbitration agreement and he will find it so, you all will find it so. After this war what is going to happen? No man knows, but I do know this, that the sort of wages now paid will not be paid; I know that thousands of men will be thrown out of employment, and I know, as you know, that with the cost of living as it is men are not laying up for a rainy day, so called. Ah, let me say to you, let me say to you in this Convention that a duty almost as deep and heavy rests upon us here as upon those who are across the water. For let me say, when those men come back they will want to go into industry, and where will they find their place? Will you keep wages down? Will you here to-day or in this Convention enter into any arrangement that is so drastic as would fix practically a price upon labor that will fix the cost of living? No, you dare not, not one of you who is opposed to this proposition. You dare not go into a man's industry and say: "You shall not do this" or "You shall not do that." This is what the government of the United States has been doing, Will the people stand for it after the war? The labor men will stand for it. The men who are interested in the welfare of our country will stand for government ownership and control of great public utilities. You do not hear a man complain of the increase of fares upon a railroad; and why? For the same reason that he does not kick about the increased rate for mailing a letter, because the money goes into the pockets of the government and he is willing to pay it. But you put the fare at three cents a mile and let it go into private industry, and you will find that a howl will go up, and righteously so. The spirit of the times demands that there must be more collective ownership. Organized labor, while it is demanding this, is not demanding it for itself; it is demanding it for every man and woman and child if they be obliged to work. So far as our individual affairs are concerned we can take care of ourselves. But we are willing and we want to go outside of those to the so-called independent laborer. I should like to see one outside of the labor organizations; he does not exist. He does not exist any more than the fallacy that labor and capital can walk hand in hand and lie down side by side so long as their very existence for livelihood rests upon the power that they have to take by strength from him who is

weaker than they. And that is our industrial system. That is the argument upon this floor.

Mr. BODFISH: Do I understand the gentleman to say that it is impossible to settle differences between capital and labor under our present system, and if so, why does he advocate the proposition he now is urging?

Mr. HARRIMAN: I say that it is not possible, — it is not possible under this system nor do I believe it is possible under the system which he invokes to settle industrial disputes. They are ever going on and on until finally the great mass of the people will realize that the benefit of a few is not paramount to the many, but that the great mass of people themselves have a right to rule themselves, and that great mass of people is those who labor, not only by hand but by brain, and the mistake that is made in this Convention or anywhere else is to consider labor and capital as the two extremes. Capital is inanimate and labor is a live, living thing; it has a soul. And for that soul and for its welfare and against the unwilling and against the murderous dollar it is that the labor movement protests and will continue to protest and will defy compulsory arbitration or any other form of industrial or political slavery that rests upon the great mass of the people to their detriment and to the betterment of the few,— a particular class who have accumulated to themselves enough of the wealth of the world to be able to use that wealth for the further enslavement of the many and for their aggrandizement.

Mr. BRINE of Somerville: This debate has been going on now for about three days. This is the third day and I think almost everybody knows how he is going to vote. I move the previous question.

Mr. DENNIS D. DRISCOLL of Boston: I am sorry that at the adjournment time the delegate from Somerville, with his liberal spirit would not give the labor men an opportunity to speak against compulsory arbitration, which is the latest amendment put in here. They want to put the previous question over on us and he tells us we have had three days for debate. We have had really only two days for discussion, for it began on Friday. The subject now before this Convention, — the injunction proposition, — came up Friday afternoon. I was one who spoke and the delegate in the fourth division (Mr. Underhill) was the other. Therefore we have not had two or three days discussion. I should like an opportunity to make a defence of the trade-union movement, which proposes nothing that would make any trouble or create any unrest or lack of harmony. I should like also to speak against compulsory arbitration. If anybody knows anything about the Canadian compulsory arbitration law he knows this is the way it works: When the men had asked their employers for arbitration they found that they were filling their places one by one and those who were looking for compulsory arbitration were being discharged.

Debate was continued after the recess.

Mr. BRINE of Somerville: I desire to ask unanimous consent to withdraw the motion for the previous question. The gentleman in the first division (Mr. Dennis D. Driscoll) made a point that I had overlooked. He stated that they were talking now, not on the resolution on the calendar, but on the amendment by Mr. Bodfish, and while they had talked for two or three days on the original proposal, the

amendment had had very little consideration. I think his point was well taken, and I desire to withdraw the motion.

Mr. JONES of Melrose: The matter before the Convention is of such great importance that I personally should like the amendment offered by Mr. Bodfish to be heard once again. I think perhaps we have failed to catch the whole purport of it, which is rather unfortunate.

The Secretary again read the amendment offered by Mr. Bodfish of Barnstable, as follows: —

Full power and authority are hereby vested in the General Court to provide for the adjudication of any controversies between employers and employees and to provide against lockouts, strikes, or any other cause of involuntary or unnecessary unemployment, and to fix penalties and make any other reasonable or necessary provisions to carry out the purpose of this amendment.

Mr. D. D. DRISCOLL of Boston: I am opposed to the resolution just read, or the amendment that is made here. It was done in such haste that it did not give the men who have had some experience in the labor movement a chance to study it. Our committee do not hold a day session. I got in touch with the officers this morning and held a session to have them make a standing on the questions here, so the labor movement could give its information to the delegates of the Convention. This subject had not been announced at that time. I feel it is my duty to oppose it. While they give us the name of being labor leaders, I know so much about the labor movement that I can say that all we do, as far as delegates in this Convention are concerned, is to represent the people while we are here; and we are glad to give, from our experience in the labor movement, any information that is of any benefit to any delegate in this Convention.

I am opposed to compulsory arbitration. I am opposed to members trying to come here and trying to give the Legislature the power that that resolution now read would give. My reasons for that are these: First, you are going to drag the labor movement into politics. That I am opposed to. Other people may believe it. Other men disagree with me on that. That is their right. I am seriously opposed to it on that ground. It is true in the labor movement that we have men who believe in the socialistic propaganda and such legislation as this, which they claim is in the educational line to the labor men. The other men are called the "pure and simples;" unfortunately, I am one of the "pure and simples." I do not believe that all this politics is of great benefit, — forcing the trades-unionists into the political propaganda. If it comes to the day that it comes too strong, they would not want to nominate anybody but themselves.

I believe good men come into the Legislature to enact laws who never carried a union card. I believe sometimes we send men with union cards better than other men, and let justice be done. That is human nature.

We have discussed this question in many conventions. Will you drive the proposition, the political faction, into the great political discussions? I hope the delegates to this Convention to-day will defeat it. Is it worth while for many men here who are interested in fair play, — and I am not well posted on it myself, only in regard to what I have heard in the conventions of the American Federation of Labor? I have attended a great many of them up until December,

1907. I was just about to return home from one in November, 1907. We had discussed all these questions there, and it was there I heard from the Canadian Trades Congress, from their delegate, — I had the honor once of being there myself, representing the American Federation of Labor, — of the failure now of compulsory arbitration in Canada. Though the question was being arbitrated, the men who then were working were discharged one by one, and their places were filled, and compulsory arbitration was still going on. That may be for the success of some employers, but it is a damnable course for the working-men.

When it comes to the proposition of compulsory arbitration, it is a great big problem. It is one of those things that the gentlemen who believe in it could give a little more study to than they have done. If the people of this Commonwealth are sincere, and believe in giving fair play to these classes, without legislation, I am ready to meet the representatives of the corporations of this Commonwealth, — and I do not give the corporations the great power that you hear them crucified for on the platform on the controlling of legislation; but I am willing to meet their representatives, after this Convention adjourns, and I will arrange with them to meet the representatives of the labor movement of Massachusetts, and see if we cannot inaugurate a system to come to the next Legislature with increased power and reorganize the State Board of Conciliation and Arbitration, so that it may become a greater benefit and do the great work that Mr. Endicott is trying to do in Massachusetts. If the men are interested in arbitration and conciliation, and are sincere, I will arrange with their attorneys to meet the representatives of the Massachusetts State Branch of the American Federation of Labor to discuss this question, and give the textile unions and others a chance to meet all of them, and see if something cannot be done through legislation to give them greater power; so that we can have men on the battle-field, and do away with strikes and strikers, through conciliation and arbitration; and you will find more peace that way and better success than in what is going on to-day.

It is up to the delegates of this Convention. It is one of those serious questions. I do not want to start making a labor speech. I have spoken in all parts of this Commonwealth on the question of labor. We have our faults and we have our blessings. Everybody has that. You may charge us on the floor of the Convention, you may say we are all good fellows, and we are honest, etc.; no thanks to anybody but ourselves for that. But when accusations are made against any man, or any body of men, I say they are worthy of what credit rightfully belongs to them.

During the argument on last Friday by the courageous member of this Convention he gave his personal opinion, which he has a right to as well as anybody else. When he referred to the war and organized labor, I said to the labor men at a meeting that I attended since then: "Be cool, do not get fussed up over that kind of talk. It will straighten itself out; let the matter take its course; when it is all over, read it." Sure, — we are defending the country. Why, we defend it so strong that the men of one of our little unions in Boston, known as Bartenders' Union 77, put up $100,000 of the money of their members for bonds in the last bond issue. The city of Boston,

through its labor organizations, — think this over, gentlemen, — helped to lead the city of Boston to make its great reputation, as did the union men throughout the country. Somerville fell down, and if Somerville fell down and did not do its duty as a city it must be full of non-union men, because the union men went out and purchased bonds. And they said: "No thanks to them," but they did not mean that. I did not take the statement that way. I do not believe it was meant that while the boys across the water are hungry, not getting shoes, that the trades-union movement is to blame for it. No, it is not. The trades-union movement, which you men do not understand, is standing loyally behind the battle-field to-day, with all the influence of hot air and hot talk to come out on strike, loyal to the principles of the government, standing loyally behind their machinery, backing it up, while other men go about and form individual unions. Now the trades-union movement does not uphold it. They are not to be crucified and assailed for the actions of those men.

Let me bring it to the attention of the delegates here. True; I know something about these organizations. I have been thirty years a member. Up to December, 1910, I held the office of secretary-treasurer of the State Branch of the American Federation of Labor. I visited all the unions. I helped out the international unions, and always tried to prevent strikes and bring about agreements. Our international union gives us two freedoms, — the right to our political and religious convictions. We do not uphold these little strikes you read about in the papers. They may not be members of the international union.

The best illustration of it I can give to the delegates is this reference the other day about the city of Brockton. Who is upholding the strike in the city of Brockton? Some of the men out of the independent unions have been personal friends of mine for twenty years. They have an international organization, they have the shoe-workers' international union; and there they have a case for arbitration, a division fight on the inside. Some men bolted and left the organization. They are not members of the American Federation of Labor, and there is no reason why statements should be made by anybody that the labor men of this Commonwealth are not loyal to their country. I never met a labor man in my life who said: "To hell with this country; it is the union power first." They all said: "My country, 'tis of thee." That is their cry everywhere. They will fight for their country and stand loyally behind the people to bring victory.

I should not like to have it said after adjournment of this Convention, if you defeated every piece of legislation there is here in the interest of labor, that any man ever will dare stand on a platform and assail the character of the delegates who may agree or disagree with me, because the gentleman had charged, or this Convention had charged, that the trades-union movement of America was not loyal to the country, in the defence of the war we are now in. I refer you to the President of the United States, I refer you to the representatives of the Army and Navy, who called our men to Washington last week. What for? We will show you what for before we get through: To bring about the victory of this great fight that is now going on. I do not give all our work to the press. We are going to do the greatest work that is being done throughout this country in the interests of

success and victory, so that it will be America, the American Nation, and America forever. That is the attitude of trades-unionism, trades-union members and organizations of this State and of this country.

I make this statement here, because in many meetings of the labor-unions we may look for a copy of speeches made here, so that we may know these things. Our unions which are connected with our international union are just as loyal to the country as anybody else. I am not going to tell you about the charitable work we have been doing. I have been secretary-treasurer of many of these charity committees. I put in four years and a half as deputy on the penal commission of Suffolk County, and I know the labor-unions give up their money and some of them never get it back; they restore the furniture, look after their families, in various cities of this Commonwealth. I challenge anybody to say there is any better work than that done. That is the work that has been going on, the work of all the unions, not only in this State but throughout the country.

Let me say to the delegates of the Convention here, I am not worked up a bit about the statement made here. I admire the gentleman for his courage, but he has got no more than I have got. I admire the statement he made here, but I do not believe the men in organized labor are not loyal to America in the fight that is now going on.

I tell you about the unions, their bonds and their fighting, what they are doing. We are hollering for peace. We gave 15,000 names and addresses of our members to the War Emergency Board at the State House, I believe Colonel Gaston is at the head of it and Cornelius Carmody one of the deputies. We told our men to be ready to sacrifice the occupations they are now in and go into the ammunition factories. The young men have got to go to the front. There are 15,000 names in the State House now waiting to be called.

The only thing we say to the people who employ labor in this Commonwealth is, select your labor adjuster, some man in whom you yourself have confidence, not a man whom we recommend, so that when you have trouble we can go to him with a delegate and be able to restore peace, and say whether or not a man can be laid off. When we reach the men who are in our labor-unions, whether they lived in Germany or came from Pinkerton's Detective Agency, who may be the biggest kickers for a strike, we know them, and we are suspicious of men working in the Fore River works, at Squantum, at Lynn and other places, and we want to catch them, and we are trying to catch them.

I am opposed to any man in Massachusetts, no matter where he works, talking any language but the English language, in any public speech or in any workshop in this Commonwealth. I challenge the employer to back up the issue, so that they will have to talk the language that we are talking, and we will know what is said, and what is going on in barber shops, and the electric cars, and the workshops.

That is the kind of work the labor movement is doing, no matter what your feelings may be on the question of injunctions. And as I said in my little talk last Friday, let it be said that we are not going to go from this Convention except with the best of American spirit toward each other, whether we differ on injunction, the right to strike, or the right to do picket duty. I want you to have the feeling they have in Congress, and in the United States Senate, and that the President of the United States has. We are true, loyal Americans, and

we want victory. We want America to win, and we want to go up and down with our people, not as you have gone, but in the lines and trenches, ready to fight to the death to bring victory and happiness to the coming generation, and not to have them suffer the same as we suffered in our time fighting for what we believed to be fair play and justice. [Applause.]

Mr. LOMASNEY of Boston: I should like to ask of the gentleman from Wellesley (Mr. Pillsbury), if he believes that all questions concerning disputes between capital and labor should be submitted to a board of arbitration; and if he does, would he be in favor of the voters of the State electing that board?

Mr. PILLSBURY of Wellesley: My answer to the first part of the question, if I understand it, is "Yes;" and to the second part, if I understand it, "No." I believe in the appointive system for public officials rather than the elective system so far as practicable, and I would have every officer under the government appointed, except the members of the Legislature, who exercise the law-making power.

Mr. LOMASNEY: Now, you see what the gentleman really means. Everyone knows that the question of injunctions is raising a great deal of trouble for the courts; and many of the judges are anxious to get rid of passing on them. To-day when a proposition is put forward that a board should be elected, the gentleman says that he would not be willing that the qualified voters of the State should elect that board. He told you before the recess of the great interest which the people of the State had in such a board. He told you what a great manufacturing State we were. He told you of the large investments that capital had made in a great number of manufacturing industries; and then he told you of what it meant for both labor and capital to live in harmony. Still with all those vital and important interests at stake his claim now is that we should not refer to the voters themselves the question of who should serve on this board.

It seems to me that is just where he fails. It seems to me that he speaks the word for what is known as "privilege" in this State. I believe there are a great many manufacturers, however, who disagree with him. But, since he, as the representative of that element of the community known as special privilege, and for whom he speaks, has seen fit to make a sneering allusion to the candidacy of the gentleman from Brookline (Mr. Whipple) for a place in the United States Senate, I hope that in view of the stand for the people that the gentleman from Brookline has made he will accept the challenge issued to him by the gentleman from Wellesley, Mr. Pillsbury, and not run away as some other men do here. It seems to me, sir, that there is now but one course open to the gentleman from Brookline; and that is to go before the people of the State on the issue as to whether or not the people believe in such a narrow policy. Do they believe in the election of such a board? Or do they believe that every office-holder but the Legislature in this State should be appointed? That is the real question now. I am glad that the gentleman from Wellesley is so frank and has put the matter forward so clearly. It seems to me that this is the vital issue here: "Will you trust the people?" If the manufacturers cannot be trusted to handle their own affairs, if the workingmen of the State cannot be trusted to handle their own affairs, what becomes of democracy?

Of course, the gentleman from Wellesley is wrong. I think that this Convention believes he is wrong. I believe that you must meet this question in some practical way and relieve the courts; and it is better to have a board elected by the people to meet this situation than it is to have the matter of injunctions continually brought into the courts and constantly bringing down on the judges the criticism that they now are anxious to avoid. Therefore, I shall vote for the passage of document No. 220.

Mr. BROWN of Brockton: While the gentleman from Brookline (Mr. Whipple) can take care of himself, and can do so without any of my help, it pleases me at the present time to bring to your attention that one man has held the Senatorship of the United States, — one man whom those outside of his party have loved and honored, — and if you have any doubt that he holds precisely the same ideas that were held by the gentleman from Brookline you have only to turn to the remarks of George Frisbie Hoar when the Sherman Act was passed. His argument then, the ideas on which it was founded, have been reproduced ably by the gentleman from Brookline (Mr. Whipple).

First, compulsory arbitration. The gentleman does not like the word "compulsory." The Convention should agree with him. At this very moment our eyes turn to read what is the latest position of the incarnation, the champion of the theory of compulsion. About the time he went to war there was pending in the Reichstag the resolution favored by the gentleman from Wellesley (Mr. Pillsbury), — compulsory arbitration. The word compulsory is a contradiction of the word arbitration. Arbitration means conciliation; conciliation means bringing together; bringing together means living in harmony. Say you, do you believe in harmony with a club? For that is your compulsory arbitration reduced to the last analysis. It is not workable. We are reaching out here to deal with a difficulty, and perhaps thinking we may deal with the difficulty without dealing with the cause which produces the difficulty. Unless you remove the cause of these strikes you will continue to have them; the cause is the fundamental.

Take this particular case of Underhill *v.* The Trade-Unions and this demurrer, as I might put it, of compulsory arbitration. While I am talking to a Convention made up largely of lawyers, if I want to prove my case I ought to seek among lawyers to find some principle from which I could reason conclusively that the gentleman from Somerville (Mr. Underhill) was wrong. Have you not a principle that runs something like this: That if a person lights a squib and throws it, and another party throws it elsewhere, and thus does damage, the one who lights the squib is responsible for the damage; responsible even though it might not have done any damage in the original place?

I cannot cite the case, but I think there is some such case in law. If there is not I would lay that down as the principle, then, upon which I should like to proceed: The idea that the one who originates, the starter of the cause, is responsible for its results. To prove that the unions are results and not the cause of results, I hold in my hand one paper that contains statements to support my contention. It is the Boston Herald of last Saturday. That paper came to me at a time when I was in a very seductive spot for thought; the shadows of the trees undulated on the sunlit green that fell to the water's edge;

the waves that were just lapping the shore and gay painted boats that floated there, sounded a harmony to the singing of the birds overhead. Amid such conditions I read the Boston Herald.

The first thing that attracted my attention was news of the war; then I went speedily to the report of the Convention proceedings and to what the gentleman from Somerville (Mr. Underhill) had to say. Then I turned over to the headings from Washington, one that applied to this very question, — I want to be as brief as possible and at the same time make myself understood. The heading is: "Government Business Dominates Industry." It continues:

Though labor unsettlement is growing to an alarming extent, it is inspiring to find in various directions new high records are being established in industrial output. The reports of enthusiasm among shipyard workers over the results they are attaining are inspiring. Reports from manufacturing districts tell of steadily increasing percentage.

You will find no reference to the Underhill theory of "obstruction" by reading the article through. I turn over to the financial page, and again find something dealing with the labor situation, — but I am fearful of time and the patience of the delegates. What I want to bring to your attention is this: The price of labor is being fixed by employers competing with each other for labor which, at the present time, is abnormally high. Does anyone doubt it? Take the price which the government has fixed for unskilled labor. Well, how is it apropos? Because the very moment that you fix a standard for unskilled labor very high, there must be a necessity for it. It must be that the government has examined what was the cost of living of that unskilled labor and then placed a wage whereby labor could live, acting on the theory that labor must be contented, otherwise there is no production; and that is why the government has been so liberal with labor. It wants production. Every American wants production. The result is that skilled labor takes the fixed wage of unskilled labor as a standard and asks for higher wages. Turn the pages of the Herald again and you find another statement. Mr Endicott voluntarily raises the wages of his employees. Nobody asks for it, but he raises ten per cent. Turn to the next page and somebody voluntarily has raised the wages of employees 20 per cent. Thus you will find that the causes of the disturbances do not originate with trades-unions or with labor. They are fundamental. Employers and employees are trying to find a true and honest relation between wages and the cost of living.

Every man, if one is, is entitled to a profit. Otherwise than that he never can acquire property, because if it takes all that he can get to live he certainly then has not got what the Constitution guarantees him, — the right to acquire property. Therefore he must have a profit.

Now, while we are drifting about in the world war at the present time here is another very interesting item in this Herald, in the financial column. We have been dealing so much with privileges with classes, it is well to have an eye for a moment on this item which I read:

The agitation among producers of gold for relief from the conditions which surround their industry, created by steadily rising costs, and a fixed price for their product is becoming insistent.

The financial article goes on to tell what is coming after the war. Well, leave that. If the price of labor was measured by a yardstick, and between one pay-day and the other the yardstick would change does anyone doubt the amount received by labor for its wage would be the same when the yardstick is changed as it was before the change? The yardstick which measures the price for the employer and the employee is changing, has been changing, and probably will continue to change for some time to come. Therefore the fact that there are strikes will continue, and they are bound to continue, until the standard becomes stable.

We are living under the most unusual conditions. It was not many years ago that we were assured that gold was the standard that was stable and that never changed. An election was carried on that theory. The statesmen declared that value could not change; and yet conditions have changed it. There was a time when 25.8 grains of gold nine-tenths fine was a dollar, and it is to-day, and will be until legislation changes it; but as the dollar is created and put into the volume it becomes one of the units, whether it is created by gold or whether it is created by the credit of the system which we have got in this country, and the value of each unit is governed by the law of supply and demand. Now, this is apropos here, for this reason: There will be the continually rising price of labor because of the continually rising price of commodities, caused perhaps by a continual increase in the number of units that measure the price of labor and its products. It means a shifting measure. That brings changed relations between the employer and employee.

What I am trying to show is that you cannot fairly condemn the labor-unions as the cause of all these disturbances; they automatically or involuntarily try to lift the burden that is imposed upon them. If any are to be condemned, it is those who have the valuable privilege and monopoly of demanding and obtaining their own price for their product. Between the two opposite extremes we find trouble. The question is, where did it originate? And, whether there be any condemnation placed on it or not, the certainty is that the troubles originate in the changing of the yardstick. We have spoken here about the wages, but the wage is an incidental. A man works to obtain the necessities of life and to have something left over. If wages do not bring to him these necessities and the profit, do you expect that he will remain contented? Do you expect that compulsory arbitration will change such conditions?

My contention is that there is no necessity to change the principle of voluntary arbitration upon which you now are adjusting these relations.

I take this opportunity to refer to what I was credited as having said, — that the present system was slavery. I am not conscious of having said it. I am conscious of saying only what I now say to this Convention. Standing before you are two men, one of them black, the other white. They both have the same productive capacity; they both offer their services for the same wage. These two men are equal before the law. Does any one contend there was a time when a man, if his flesh was black, was held in slavery? How was he put in slavery? Does any one deny that the slave condition was maintained by the law? It was a physical condition of slavery perpetuated

by law. The law made that man a slave. You say he is free now and he never by any process of law can be placed in the condition of slavery again. That is the assertion. Yet that which has been may be again. The black man is no longer a slave because public opinion would not permit that condition to remain. He was a chattel slave, — property at one time, — and I honor your relatives, Mr. Pillsbury, because they stood against human slavery. There were many of Massachusetts leaders who fought slavery, — Whittier, Wendell Phillips, Lucy Stone, Susan Anthony, Lloyd Garrison, and many others stood with Parker Pillsbury. We honor them. The State honors them. The State is proud of gathering into monuments the rocks that were thrown at those who obstructed in the streets the enforcement of the law to return a slave. The fathers are proud to go to the monument with children and point to the statue of Lloyd Garrison; but they often forget to tell them that it is made up of rocks that their fathers threw at Lloyd Garrison while he was living. Those thus honored were in their day law-breakers. They received stolen property in concealing the slave; but they obeyed "the higher law." They found in the higher law their justification for violating the human law as it then stood. Is it not possible that the higher law justifies the acts of labor which Mr. Underhill condemns? The labor men believe that "the higher law" demands better living conditions for men, women and children. You hear it expounded here in different ways. You may hear it expounded by a socialist, by one who was a socialist and has nearly gotten over the attack, by a Republican, by a "pure and simple," as one has said, possibly by one who thinks he is pure, and who is not so sure that he is simple. You may go all the way through, but you find underlying the trades-union movement humanitarian ideas. They want to uplift the man who is in a condition in which he ought not to be. The wage is merely incidental. There is not an equality in the contending sides of wages demanded and wages given. An aggregation of capital, controlled by three or four men, can agree to do something to evade a decision, and there is no proof of it left behind; that would happen in a decree for compulsory arbitration. They can get outside of the decree. An aggregation of men in labor-unions without money cannot get rid of the decree. There is no equality here. Many a man is compelled to work for his daily bread and nothing else, and never even by the strictest frugality can accumulate much of anything. Worse than that, to meet the expenses of the family, woman, the daughter or wife of the working-man, often is obliged to work and submit to the conditions that exist in some of the mills or factories. If this is the best we can get out of civilization I would not have much respect for civilization. Woman, angel as she is, is compelled to go down and work because her wages are needed with those of the father to support the children. When unions enter a protest, and try to alter these objectionable conditions or to get better wages, the opposition comes forward to say there is no such thing as slavery. I have been nearly thirty years in the labor movement, I have been the greater length of that time bearing the international typographical card. I have been twice president of my Typographical Union, secretary of my Central for a long time, more than twenty years sitting in that Central, hardly losing an evening at their meetings. I think I know

something about conciliation; and the difference between voluntary and compulsory arbitration. Right you are, Mr. Delegate from Wellesley and the other delegates who say this question is important. Why, you do not know what may be coming like a cloud on the clear sky. In my own city the unions were at work. They are under an arbitration agreement. There came a difference about wages; the union stood by its contract. The men, strange to say, meet entirely aside from the union, and proceed on their own course to strike and not wait for an orderly determination. They have contributed for twenty years to the building of the theory that all parts of a shoe shall be under one union jurisdiction, yet, because of unusual conditions, we are threatened to-day with the tearing down of the whole of the upbuilding.

Mr. MacMaster of Bridgewater: I should like to ask the delegate, having in mind the situation in his own city at the present time, if it would not be a good thing to have some tribunal that could adjudicate that situation, with power to carry into effect its decree of adjudication.

Mr. Brown: I will answer the gentleman. While all government is force, and in the last analysis I suppose you would say that force has got to govern, my contention is, No. There is only one way we can settle that, and that is by the appeal to reason. At present the only issue is right here: The workers have broken a contract. "You have broken a contract," say all the unions there on the outside, "and you are endangering our conciliation, you are endangering our collective bargaining. You are endangering everything. Go back to work. You do not know your grievance. You say you want such a wage. Well, but your contract provides for arbitration, and then you will know whether you do or do not get the wage you demand." For the time being there are men who have sufficient influence not even to allow the other side to speak. Possibly you tell me: "Why, that is your city that a little while ago you were proclaiming as a city of brotherly love!" That is true. This trouble comes out of a clear sky. It is liable to come anywhere.

My idea has been from the beginning that we talk over this great question here. You have an opportunity to convert the labor people just as much as the labor people have to convert you. All men, all men who amount to anything, have got some faith in their own ideas, faith in those ideas even when the rope is around their neck, as Garrison had it. On the declaration that labor is property, I have an idea that Abraham Lincoln would say: "My hand penned the word 'emancipation'. The idea was from the Everlasting. The figment of a fiction that the labor of a human being is property is as weak and thin as a broth made of the breastbone of a chicken that starved to death." Abolitionists had decided ideas on this theory that human flesh was property. I can sympathize with your legal minds that law has said so, and for stability it ought to remain so; but I shall continue to maintain that law may give such an undue advantage to those who want to oppress labor that the result may be a condition equal to slavery.

Propositions for voluntary conciliation and arbitration have come from the labor-unions. They never have objected to them. They have abided by them. They have helped to build them up. That is

peaceable voluntary arbitration. Compulsory arbitration are two opposing words. They do not go together. I have tried to show that it is the spirit of harmony and the spirit of conciliation, the influence of reason, — not force, — that brings men together.

Mr. Luce of Waltham: Debate on this very interesting and important subject began about this time on Thursday afternoon. We have now given to it nearly ten hours, twice as much, if my memory serves me, as has been given to any other topic before the Convention at this session. In view of that fact, and in the hope that members have been illuminated enough by the interesting arguments we have heard, I move the previous question.

Mr. Carr of Hopkinton: I have not got very much to say upon this question, but I wish to state, in view of the criticisms that have been made here this morning by the gentleman from Wellesley (Mr. Pillsbury) in comparing the Act of 1914 with this proposed amendment No. 220, in which he said that law was an attempt to legalize unlawful combinations, that I was a member of that House of 1914, and had heard all the *pros* and *cons* on this question when we enacted the substance of the document under discussion, No. 220, into the laws of that year, and that we had then, at that time, a Governor to whom must be given great credit, for in spite of a great deal of pressure of big business from a great many directions, trying to make him veto that law, he had the courage of his convictions and made that the law of Massachusetts in so far as the Legislature and the Governor could do so. That law was discussed and thoroughly understood by the members of that House and by all of the people of Massachusetts. It was the courts that said afterwards that the law as enacted in 1914 was unconstitutional. Now the labor people are doing the only thing they can do, and act intelligently, to make that law constitutional and strip it for all time of the doubt of whether labor is property or a commodity. Labor says: "That is what we are aiming at; we want the substance of the law of 1914, which the courts have said is unconstitutional. We want that law made constitutional. That is the only question involved here. Labor wants that law that was enacted in 1914 made constitutional. The only intelligent way that we can have that law made constitutional, as we have been advised by our attorneys, is to have that law or its essence as passed in 1914 embodied in our Constitution." That is the plain proposition before this Convention, and that is what labor asks you to vote for. It is not any far-fetched idea, it is not any idea that is repugnant to common sense, repugnant to justice; it is asking that a law that was adopted in a Massachusetts Legislature by a large majority of both branches may become constitutional.

Mr. Sawyer of Ware: I sincerely hope this Convention will vote down the amendment moved by the gentleman from Barnstable (Mr. Bodfish). The American Federation of Labor came to this Convention asking bread, and if we adopt the substitution of the gentleman from Barnstable (Mr. Bodfish) we are giving them a stone. If we are not prepared to write into the Constitution what organized labor desires in the shape of No. 220 let us simply say so, but let us not add insult to our action by thrusting down their throat, or attempting to thrust down their throat, the compulsory arbitration proposition which organized labor has fought for years. Now they have come

here asking that the courts shall be restrained from interfering in certain of their activities. If we are not prepared to give them that, let us say so and vote down everything. Let us not, however, turn around and say: "We will force the General Court to take cognizance of these activities that you want no court to act upon. We will force the General Court to act upon them." In other words, we are not only refusing to do what labor wants done, but we are doing the thing that they do not want done, if we substitute the amendment of the gentleman from Barnstable (Mr. Bodfish). Let us vote down the substitution of that amendment, and then let us do as we choose about No. 220.

Mr. Jones of Melrose: The proposition is a very simple one, and much of the debate has been utterly ungermane to it. As I understand the scope of the amendment moved by the delegate from Barnstable (Mr. Bodfish) it in very simple and general language seeks to give additional power to the Legislature to enact legislation which will tend to check industrial disputes or disturbances which arise through strikes, lockouts, boycotts and other interruptions of industry. If there is any one thing in which the people of this Commonwealth are interested to-day it is surely that one thing, and I say very earnestly that if we refuse the people of this Commonwealth an opportunity to express their feeling upon this general question we are very derelict in our duty. I cannot understand why any representative of labor here should arise in his place and oppose a proposition which would give to the people of this Commonwealth an opportunity to express their opinion upon this question.

Mr. Brown of Brockton: I desire to ask the gentleman this question: Are you prepared, if labor will agree with you to send down your question of compulsory arbitration, to send down as an alternative proposition our measure declaring that labor is not property, — send both down to the people? Are you in favor of that?

Mr. Jones: The specific question of compulsory arbitration is not now pending before this Convention. It may be that a remedy could be found, it may be short of compulsory arbitration, just as it has been found in Canada. My understanding of the Canadian industrial disputes act is, after considerable investigation, that it has been productive of great good. It is not a compulsory arbitration act in its strict sense; it is more a compulsory investigation act, and no strike can be had until the matter in dispute is investigated and an opinion is given by some independent tribunal.

Mr. Dennis D. Driscoll of Boston: Will the delegate add, in the sincerity of his talk, a word on his proposition regulating hours of labor? I am opposed to it, but I ask him if he will put that on his resolution with this.

Mr. Jones: All these questions, if this amendment should be adopted by the people, will come ultimately before the Legislature of this Commonwealth, and there the whole question can be threshed out and decided. Now the power of the Legislature is distinctly lacking. I think we all recognize that it is a good thing to have our board of arbitration and conciliation. I understand my friend in the first division (Mr. Dennis D. Driscoll) to admit that it is, and to say that perhaps as a result of conference the powers of that board may be enlarged. Now, suppose it should turn out and the decision should

be that the powers of that board should be enlarged by giving them some power to enforce their decree. That power is lacking now in our Constitution. I sincerely trust that this very simple general proposition of the gentleman from Barnstable (Mr. Bodfish) will be adopted, and that the people of this Commonwealth will have an opportunity to express themselves upon this all important question in our social and industrial life.

Mr. UNDERHILL of Somerville: I do not care to qualify or modify in any way my remarks of Friday. Some attempt has been made to answer me on the floor of this assembly to-day. I leave it to the Convention as to the success of the answer. There are one or two things, however, I should like to touch upon in the minute that remains. One is to ask the gentleman from Boston (Mr. Moriarty) to explain how a young man of nineteen years of age now flying in France could have received word of the Lynn strike and sent back a letter commending the action of the strikers at this time, particularly when the age limit, as I understand it from personal investigation, is twenty-one years and the government distinctly refuses to enlist men under that age in the aviation service. Now, sir, he can answer in his own time, not in mine.

There is another thing also that I should like to mention regarding his statement, that is, that my speech, as he dignified it, of Friday was prepared, and that I was acting as the mouthpiece of certain interests. My speech was not prepared, only so far as listening during the morning session had prepared me to reply to those who had spoken. As for being the mouthpiece of somebody else, I plead guilty, sir, to the indictment. I speak as the mouthpiece of the independent worker, of the man who is trying to run a small manufacturing business, of the small tradesman, the salesmen, clerks, stenographers, teachers, doctors, ministers and many, many others. In reply to the gentleman in the first division (Mr. Dennis D. Driscoll) I will tell him why the city of Somerville did not come across with its quota for Liberty bonds. It is true I represent the unorganized workers, and they are just as important to the community as union workers; but, sir, while the union workers are trying to lift themselves by their boot straps with round after round of increased wages and increased cost of living and then increased wages, the wages and the income of these people for whom I speak remains stationary and the pay of the soldier remains stationary, and his family at home are bearing the added burdens of the increased cost of living.

And so, sir, my good city of Somerville did not quite reach its quota, but we have over 5,000 boys in the service, 5,000 men from our little city over there, and they are working, most of them, for $30 a month. I am proud of the record of my city. We do not place our patriotism upon a financial basis, how much we put into Liberty bonds that these boys when they come home have got to pay for through taxation in the years to come. That is not the way we measure our patriotism, sir, nor do we measure it by lip service; we measure it by action and sacrifice. The accusations I made against labor are intended for those whom the coat fits, and they can put it on. If their service consists in buying Liberty bonds and in hot air promises and they are satisfied with that kind of patriotism, then, sir, let the present and the future judge whether they are acting right and honestly and

patriotically at this particular time. I am willing to give credit to labor-unions for what they have done for the improvement of the human race in years gone by, but, sir, I denounce, as I did on Friday, the effort to throttle needed production and the disloyalty of strikes on war work.

Mr. Bodfish of Barnstable: I rise to clear up one or two things that I think should be cleared up. I have no personal motive in this. I gave little thought to this matter until last Friday, and from that time I have given every spare minute I had to it.

Now, I am friendly to labor. I remember when labor used to say: "Look at our hard condition, our low wages, our suffering families. Capital is not giving us a square deal. We are ready to arbitrate; capital is not willing to arbitrate." And they got our sympathy because they were willing to trust to the decision of an impartial tribunal, and so we had our legislation to curb the trusts, and so we gave our sympathy to organized labor and to labor in general. But to-day what do they say? What does the gentleman from Boston (Mr. Moriarty) say in answer to my question when I ask him if he prefers to continue strikes and lockouts, boycotts and black-lists, to peaceful arbitration? He says he wants peaceful arbitration, but if that does not get what he wants then he wants the right to do the other thing. I submit that if organized labor is going to take the position that organized capital did a few years ago when they said: "My property is my own, I can do what I please with my own, I will have my own way with my own" — if organized labor is going to take that position we might as well meet them to-day and tell them that they are living in America, and that in America organized labor, organized capital, every other organization, must submit to the welfare of the whole. [Applause.]

It would be too bad indeed if organized labor were forced to go into politics. I think that is why we adopted the initiative and referendum, — I voted for it, — so that organized labor, so that every person in the State, could have an opportunity to correct and supplement legislation if the Legislature failed. I think that they are in politics now. We all ought to be in politics.

The suggestion of the gentleman from Boston, who sometimes is described as the gentleman from ward 8 (Mr. Lomasney), is that he will oppose this thing because the gentleman from Wellesley (Mr. Pillsbury) happens to believe in the appointive rather than the elective system, which is not at issue at all in this amendment. I think that is about the weakest argument that ever came from him. I always thought his arguments were strong, but I submit that there is not much virtue in that argument.

Mr. O'Connell of Salem: The gentleman in the fourth division (Mr. Bodfish) who has submitted the amendment for compulsory arbitration says that he is a friend of labor, and mentions labor-unions. I was about to ask the gentleman if he knew what constituted a labor-union. There is no closed door to labor-unions. What we, the members of labor-unions, have come here for, in asking that the injunction clause be eliminated, is for the benefit of those who hereafter may come into labor organizations. The gentleman from Somerville (Mr. Underhill) says he represents a non-union district. Is there any good reason to believe that a year from to-day Somerville may not be

a strictly union district, and will he have any method or any way of extinguishing the growth toward trade-unionism if his constituents appear desirous of joining hands with those who already are in it? Is it a question of what has made labor-unions? That question is a fundamental one. Human rights, the feeling that human people want what belongs to them, have made men and women band themselves together.

They say that our patriotism is only lip patriotism and in the buying of Liberty bonds. I want to say here that from a small organization of 35,000 men of which I am a member we had on the 22d day of last May 8,500 members in the service. We have our brothers and we have those dear to us over there. And we are not stopping the wheels of industry. We have done more to bring about coöperation and to bring about a maximum production than any other element in this Nation to-day. The administration at Washington on every occasion and all occasions when it wanted to bring about that maximum production has called upon the leaders of organized labor or those who have been in a position to leave to go there and suggest, and they have responded and have been in accord. They have suggested for the best and they have done their utmost. It seems shameful at this time that those who are in the group of organized labor should be condemned, should be antagonized. Antagonism is not what we need to-day. Antagonism will not bring around what is fundamentally right. We need further coöperation. We need less antagonism. We need an intermingling of our different views.

Compulsory arbitration has been submitted as a substitute for the original resolution. I do not think it is germane to the question. I think that there should be a division of the question. I do not think the time is here for compulsory arbitration. If compulsory arbitration must be made constitutional, then to my mind our present form of arbitration under statute law must be unconstitutional. If I were one of the most intelligent and well-educated men of the Convention I believe I could be better able to speak upon this subject, but I feel that I know my rights as a laboring man. I know what drove me into a labor-union, — seeing working people trodden down! And I have done my utmost since my association and affiliations with labor-unions to bring about a better spirit for the uplift of this country, for the uplift of the working-man and for the benefit of the business man. If there must be compulsory arbitration, if there must be arbitration on wages, then there must be arbitration upon the selling price of the product of that labor, there must be conscription of both. There cannot be one of one and none of the other. There must be fairness, or it is unconstitutional, and the constitutionality of these things is the question we are arguing upon.

I feel that we ought to divide the question. We ought to eliminate the compulsory arbitration amendment until we have gone further into the merits of it. This is a big affair. It is an affair that many men can study to some degree and express themselves upon far better than they have expressed themselves to-day, and some of the intelligent men of this Convention can read and learn much upon this question.

I believe that on the question of injunctions we feel that we have been enjoined improperly by some of the courts. We believe that honest, true men, men who have been welcomed into the States and

who are fine citizens here, are entitled to more than being enjoined when they believe they are standing for human rights. This is a moral question, not a question of law.

The PRESIDING OFFICER: There are two minutes left for debate.

Mr. MORIARTY: I do not want to take half that time. All I want to do is to correct a false impression. I did not say that that boy was flying in France. He is in the service, flying in this country, — practicing flying.

Mr. DONOVAN of Springfield: I have just a short time. I wish I had more time, so that I could give this Convention the truth in regard to the situation with the General Electric Company in Lynn. That matter has been dragged into the debate, and it would be well that the delegates should understand what the situation is, what caused the walkout. The reason for it is this: The United States government has adopted a labor policy which the general manager of the Lynn plant refused to put into effect in that plant. As a result of that policy certain men and women working in the plant attempted, as was guaranteed them by the policy, to form a labor organization for the purpose of collective bargaining. They were discharged; sixteen or more were discharged during the past two weeks. Two thousand men had been drafted into the army, and they were receiving from $18 to $35 a week. Their places were taken by women, who received on the average from $10 to $12 a week. These women were the first to walk out.

Mr. LOWELL of Newton: I have only a few words to say.

In the first place, as to the anti-injunction part of it. I need not repeat what my sentiments are as to that. I merely ask every delegate who does not believe in giving labor organizations entire control of the Commonwealth to vote against it.

As to the other, — compulsory arbitration, — I must preface my few remarks with the statement that what I say is merely my personal belief, because we had no very extended discussion about it and it is not a matter on which the committee on Labor stands as a committee. I believe the majority was against it; I am not quite sure even of that fact. As to compulsory arbitration my position, and it is merely my own position I am stating, is this: Compulsory arbitration, as every one knows and the gentleman from Brockton (Mr. Brown) has very well stated, is an absurdity in terms. It is compelling free will. That may not be any objection to it provided public opinion has gone far enough to support it, but in my opinion the public of this Commonwealth has not gone far enough to support a system whereby the decision of an arbitration court should be enforced by force; and therefore, to my mind, compulsory arbitration in its extremest form is not yet ripe for consideration in this Commonwealth. As to the form which they have in Canada, which as I understand it is merely keeping the wheels of industry going for two or three weeks until the matter shall be submitted to an arbitration tribunal, and after that enforcing it merely by public opinion and not by an officer armed with a club, as to that it is my opinion that we have plenty of constitutional authority for it. So that I merely say that I shall vote against it, because I do not think we are ready for an extreme form of it; and the milder form of it, if the Legislature should wish to pass it, seems to me entirely constitutional.

Mr. HARRIMAN of New Bedford: I rise to a point of order.

The PRESIDING OFFICER: The gentleman will state his point of order.

Mr. HARRIMAN: My point of order is that the amendment offered by the gentleman from Barnstable (Mr. Bodfish) cannot be acted on without prejudicing the matter No. 220; in other words, that the amendment of the gentleman from Barnstable (Mr. Bodfish) is not germane, in so much as No. 267, not having a provision for compulsory arbitration, is fortified against it.

The PRESIDING OFFICER: I shall rule the point of order not well taken.

Mr. WASHBURN of Middleborough: I rise to a parliamentary inquiry. Before voting on the amendment which is how before the Convention, I should like to know whether it imposes upon the Legislature the duty of establishing some system of compulsory arbitration, or whether it merely invests the Legislature with the discretion of doing that. Perhaps the Secretary will read it.

The amendment moved by Mr. Bodfish was rejected, by a call of the yeas and nays, by a vote of 97 to 112.

The resolution (No. 220) was rejected Tuesday, July 23, by a call of the yeas and nays, by a vote of 126 to 79.

At the next session, Wednesday, July 24, Mr. Jones of Melrose moved that the Convention reconsider the vote by which it had rejected the resolution.

Mr. JONES: The Convention realizes the parliamentary situation of this matter. My desire is to bring before the Convention, if possible, the amendment proposed by the delegate from Barnstable (Mr. Bodfish) which embodied a principle which, if adopted by the people, would give to the Legislature some power to enact legislation which would check industrial disputes, strikes and lockouts. The Convention having by a very narrow margin rejected that amendment and also rejected the resolution of the committee, it becomes necessary, in order to get the amendment of the gentleman from Barnstable (Mr. Bodfish) before the Convention, to first reconsider the action of the Convention upon the resolution.

I feel that this is a very serious situation. The delegate from Newton (Mr. Lowell) yesterday in the last few moments that he had made certain statements to which of course there was no opportunity of making a reply, and I felt perhaps that his statement that the Legislature had ample power now to enact legislation along the line of the Canadian industrial disputes act was somewhat questionable. If the Legislature in consideration of his question should attempt to evolve some legislation along the line of the Canadian act, it would involve compulsory investigation. It does seem to me that it is at least questionable whether any board or tribunal can be set up in this Commonwealth, and that power given to it, without some constitutional enlargement of authority, and I do not think that the statement of the delegate from Newton in the third division (Mr. Lowell) ought to be taken as an exact statement of fact. I see no harm whatever in allowing the people to pass upon this very grave and important question, and I feel that if there is any doubt as to the constitutional power of the Legislature to set up some tribunal which shall correspond to the tribunal which is set up by the Canadian industrial disputes act, that

matter should be cleared up now. For that reason, because it is such a vitally important matter, and a matter in which the people of this Commonwealth are so vitally interested, I do feel, as I said yesterday, that the Convention would be derelict in its duty to the public if it should let this opportunity pass without trying to do something to remedy this great evil and giving the people of the Commonwealth an opportunity to pass their opinion upon it.

For this reason I have moved to reconsider the action of the Convention upon the resolution, and if that motion should prevail, why, then I should move to reconsider the action of the Convention upon the amendment offered by the gentleman from Barnstable in the fourth division (Mr. Bodfish).

Mr. Dennis D. Driscoll of Boston: I hope that the delegates to the Convention will not vote in favor of reconsideration. We have given a good deal of time to discussing this question. We had a well attended meeting here yesterday afternoon, we had a vote by yeas and nays, and the men voted as they felt, showed their feeling on it. I do not believe in wasting any more time on the subject, because there is another resolution, I believe by a minority report of a committee, further down, that will have to come up again for discussion by the Convention. I may say the same as the delegate in the second division (Mr. Jones) just said. If the delegates to the Convention want to be consistent and want to give to the people a square deal, why not take the same feeling on the injunction amendment that you want to take on the other, and let the people vote on that, and decide whether they shall have anything to say in the time of labor disputes about the matter of issuing injunctions. Now, I am perfectly contented with the discussion that took place here and the square deal we got in this Convention, and the opportunity for every labor man to speak on the subject. We were treated manly and fairly, although defeated. I believe that the Convention discussed the question so well and was so well attended yesterday that it showed the feeling from the hearts of the delegates to the Convention. I trust that the motion for reconsideration will be defeated.

Mr. Sawyer of Ware: I should like just to call the attention of this Convention to the fact that if we reconsider and put this matter on the calendar it will provoke one of the hottest fights that this Convention has had and will make our duties at least a week longer than they should be. If we want to assume for ourselves the burden of an extra week's work in hot weather, let us reconsider. If we are satisfied with the lengthy debate of yesterday and the roll-call votes on two phases of the proposition, why, we have at least a very good excuse for not wanting to remain here one more week. And as for the main question of compulsory arbitration, I fear that the gentleman who advocates it has not looked the matter entirely through. It would mean to accentuate the warfare between capital and labor, revive it in its most bitter form, throw it and thrust it into the politics of our State, and nothing could be worse in these times of warfare than to provoke such a quarrel between capital and labor.

Mr. Dresser of Worcester: I agree with the statement of the chairman of the committee in this division (Mr. Lowell) that the Legislature now has power to do what may be necessary in the matter of compulsory arbitration. If we recall the decision of the court in the

Adamson case, or the case that had to do with the Adamson law, there is marked out there a perfectly plain and distinct path which looks toward the establishment of compulsory adjustment of every dispute relating certainly to public utilities. To-day, so far as all industries which have to do with war work are concerned, the Federal government is taking steps to care for the matter so far as it may, and it seems to me that it is the better course to let those steps proceed and not to cumber our Constitution with a provision that I think legally is unnecessary and practically, for many years, would be useless. I hope that the matter will not be reconsidered.

Mr. PILLSBURY of Wellesley: I wish first to correct the impression of my friend from Boston in this division (Mr. Dennis D. Driscoll) that there is another compulsory arbitration measure coming on. He refers, I suppose, to the resolution submitted by a minority of the joint committees on Labor and Judicial Procedure, which heard the labor injunction resolutions, submitted by a minority of that committee as part of document No. 337; but the committee have not formally put that resolution before the Convention and the matter to which it relates is now disposed of, so that my friend from Boston (Mr. Dennis D. Driscoll) is mistaken, I think, in his supposition that another compulsory arbitration measure is coming on, under which the subject can be rediscussed.

The question whether to reconsider, as moved by my friend from Melrose (Mr. Jones) is a difficult question. I cannot but sympathize with the motion, because it is quite clear from a slight examination of the roll-call of yesterday that if there had not been such a deplorable number of absentees, the proposal of the gentleman from Barnstable (Mr. Bodfish) would have been carried by a considerable majority, as I think it ought to have been. The gentleman from Ware (Mr. Sawyer) says that if the question is reopened we shall reopen the warfare between labor and capital in its bitterest form. Does he not understand, does not the Convention understand, that we cannot shrink from any proper action here for any such reason as that? Any question in controversy, and especially a momentous question of this character, must be fought out at any cost until it is settled, and settled right. That is the way we carry on our government, and it is the only way to carry it on. To return to the pending motion, I do not know that I can express my own view of it and my own feeling about it any more shortly than by saying that while I sympathize with the motion of my friend from Melrose (Mr. Jones) I should not have made it, under the present circumstances.

Mr. DEAN of Fall River: I trust that the motion of the gentleman from Melrose (Mr. Jones) will prevail. In regard to the statements of the gentleman in the third division (Mr. Sawyer) that this will promote warfare, I take a somewhat different view. This whole matter of compulsory arbitration is designed to stop warfare. What we have now is a duel between capital and labor. Under compulsory arbitration what you have is an orderly manner of settling disputes without warfare. That is the merit of this proposition and why we ought to give it every possible consideration. It produces a more stable condition, just the sort of thing that ought to be produced by a written Constitution. Give your General Court power to deal with this situation.

I am at a loss to understand labor's position in this matter, and their

objection to compulsory arbitration. Is it because they are afraid of words, — the word compulsory? I take it they are not. The court is compulsory. The court sits and passes judgment as between man and man, and that means order, it means safety to the people who live in the Commonwealth. Now labor comes in here and says that it objects to the court dealing with injunctions. We say: "You shall have a new tribunal, which shall have authority to settle this matter." Certainly labor wants to have peace. The only way that I can see that labor can possibly object to this matter is because it might weaken to some extent the importance of labor-unions, in that that constant strike and friction which persist so generally may be reduced, and the importance of the individual labor leader may be lessened. Now, that is not an evil, and the man who is working, the laborer, wants just that sort of thing.

And before I sit down I want to say a word about what the gentleman from Boston in the third division (Mr. Lomasney) said the other day. He seemed to pin his whole case on the manner in which the arbitrators were to be selected. If he will study the Bodfish amendment, he will see that there is nothing in that amendment that prevents the *election* of arbitrators, and that is what he wants. I want him to tell us, I see he is about to speak, if his whole objection to this amendment rests upon this matter of the appointment of arbitrators. Does he not approve of the General Court, that he protects so strongly here, having power to deal with this situation?

Mr. Lomasney of Boston: I believe, where you make a compromise, that each side should give and take. Now, what is the question here? I do not represent organized labor. The question is, — and you might as well face it, — who is to select the court that is going to pass on these questions? Let us assume that the Governor is to appoint the court. Then who will control the Governor? Who will have his ear? Do you suppose a Governor in the State ever lived who did not have his close friends in whom he confided? Of course not. Why are judges elected in so many States all over the country? Because the laboring classes prefer to trust the people rather than the Governor. Now, if you men representing privilege in this Convention, or capital if you want to term it such, want to have compulsory arbitration, why do you not trust the people of the State to elect this board which is to carry out the law affecting the interests of capital and labor?

I put the question frankly to the gentleman from Wellesley (Mr. Pillsbury) who for years has ably represented many of the corporations of the State. In asking him if the clients with whom he has been associated would be willing to allow the people of the State to elect this board, he frankly said: "No, we will not let the people of the State elect the board." Why? Because, as these corporations say: "We cannot control the people all the time." That is the reason.

That was his position when he said that he would not trust the people of the State to elect this board. Then how can you find fault with labor, or men who sympathize with labor, in not supporting a position such as this, when it is sought to drive them into accepting compulsory arbitration before a board which the Governor is going to appoint? If you want to compromise you should strike a half-way spirit of fairness. It seems to me that if you allow the gentleman

from Barnstable (Mr. Bodfish) to put his amendment into the Constitution then it should be provided therein that the board should be elected by the voters of the State, rather than leaving this matter to the Legislature to pass a law creating a board which would be selected by the Governor or by some corporation interest. That is where I think the weakness is in this amendment. I think if you left the question of compulsory arbitration to a board not elected by the people of the State, then you would be in this position: You would be saying that you could not trust the people of the State to elect a board favorable to the best interests of the State. But I say that in my opinion the people can be trusted to elect such a board.

Now, I do not care whether you reconsider this question or not, but those of us who have been here pretty nearly every day ought to realize that there is a day of final reckoning. We fought this matter out yesterday. We were here, and both sides were beaten. One side was beaten on one proposition, one side on the other. Some of the most conservative men in this Convention voted against one proposition and some against the other. I can see no reason to reconsider our action. If we do, the question will drag along, and will take three or four more days of our time. It seems to me, if we are going to get through here, we should say that this case has had its day in court. If we start reconsiderations now, we shall have it pointed out later that we have done it in this case and have established a bad precedent. I hope reconsideration will not prevail.

Mr. Underhill of Somerville: To get back to the question of reconsideration, on yesterday I voted for the Bodfish amendment, although I knew positively that it was of no particular use to write it into the Constitution, for, sir, in the early session of the Legislature of last year I introduced to that body a bill calling for compulsory arbitration during the war. The bill was along the lines of the Canadian arbitration act, and followed it very closely, with some more liberal provisions to labor than that act contained. It was a bill drawn by myself on my own initiative, and was presented to the committee on Labor and argued before that committee. No one raised the question, either in the committee or later in debate upon the floor of the House, as to the constitutionality of the proposition. Labor was before the committee in force and opposed the proposition, as they always have and as they have a right to do. On the other hand, the general public were not sufficiently interested to appear there in large numbers. It is true a delegation representing the Taunton Central Labor-Union advocated it because they had been locked out. It is true also that a number of small manufacturers advocated it, and I had letters from some of the interested citizens of the Commonwealth backing up the proposition. But, sir, when it came before the Legislature for action and I tried to get the negative report of the committee changed and the bill substituted, there was hardly a voice raised with mine in support of the measure. Now, sir, if the members of the Convention are particularly interested in this form of legislation let me suggest to them that unless labor is able next fall to carry out its threats and defeat me for the House I shall be here at the next session of the Legislature, I shall introduce the selfsame bill, and I welcome, not only welcome but urge, all of you who are honestly and earnestly concerned or interested in the matter to come

up here and give me a little lift on the proposition. It is not necessary that we shall have reconsideration in order that this matter may have favorable action before the Legislature.

Mr. DONOVAN of Springfield: I should like to ask the gentleman from Somerville (Mr. Underhill) if he introduced that bill knowing that the War Labor Board, the Federal commission formed for the purpose of taking up industrial disputes during the time of war, already had been appointed, and that it would come under Federal jurisdiction rather than under State jurisdiction, particularly in the industries that were doing war work.

Mr. UNDERHILL: That board had not been appointed when I introduced the bill, nor had it been appointed up to the time of the hearing, for no objection was raised by labor on the ground that the Federal jurisdiction would take care of the matter. It was simply that they were opposed to the general proposition of compulsory arbitration.

Mr. HORGAN of Boston: It seems to me that in view of the consideration that was given this proposition prior to the vote taken yesterday, the merits of the question having been thoroughly threshed out, the only justification for reconsideration at this time is based upon the assumption of the gentleman from Melrose (Mr. Jones), who made the motion, that there is a question as to the constitutional power of the Legislature to treat upon this question. I believe that the gentleman from Somerville (Mr. Underhill), who has just taken his seat, has sufficiently emphasized the fact that in the judgment of those who are familiar with legislative procedure the Legislature has sufficient power without constitutional authority to settle this problem along the lines desired by some of its advocates, if the Legislature so desires.

The other suggestion, offered by the gentleman from Wellesley (Mr. Pillsbury), that if the absentees had been present compulsory arbitration would have prevailed, seems to me so far-fetched that it is not sufficient justification for reconsideration. Therefore, I trust that reconsideration will not prevail.

Mr. DEAN of Fall River: I want to take up what the last speaker has said. In the first place, this bill offered in the Legislature by the gentleman in this division (Mr. Underhill) was a bill providing for compulsory investigation; it was not compulsory arbitration. It was drawn along the line of the Canadian act, following out an old principle in practice up there. You may remember that up there they have compulsory investigation before they allow strikes on railroads and public service companies. That is as far as they go, and that is in substance what they have there. This bill went further, as I remember it now, but it was along that line. Now, there is grave question in regard to the constitutional power of this Legislature to deal with compulsory arbitration, and I want to remind the gentleman in the first division (Mr. Dennis D. Driscoll) that the policy which seems to have been adopted here is to write into the Constitution and to give to the General Court power to deal with these questions where there is any possible doubt about their constitutional authority to deal with them. The best possible illustration of that is the report of the committee on Social Insurance. The chairman of that committee (Mr. Washburn of Worcester) came in here with a long amendment in which he set out a number of specific propositions, stating that he

personally did not favor any of them; but he said, in view of the possibility of doubt as to the constitutional power of the General Court to deal with them, he had prepared this amendment and presented it in that form. Now, going as far as he did in that amendment, it seems to me that in this case it clearly is justified in writing this amendment into the Constitution.

Mr. WHITEHEAD of Fall River: I should like to ask the gentleman if he would state here that if we reconsider this measure, if it does not mean compulsory arbitration, and not simply compulsory investigation, because labor-unions are not opposed to compulsory investigation, but they are opposed to compulsory arbitration. I will vote in favor of this if I am satisfied on what you say that it is only a matter of compulsory investigation and not compulsory arbitration.

Mr. DEAN: My friend from Fall River (Mr. Whitehead) misunderstands me. This is a matter of compulsory arbitration. That ought to be made clear. It gives the General Court power to provide for compulsory investigation or compulsory arbitration, and those of us who are standing behind this measure say that it is the only constructive proposition that has been advanced to solve this eternal problem that we have between capital and labor, and we believe it is a peaceable, stable way of dealing with the proposition.

Mr. DENNIS D. DRISCOLL of Boston: Will the delegate allow a question? Does not the State Board of Arbitration and Conciliation now have by legislation control of compulsory investigation of strikes and lockouts in this Commonwealth?

Mr. DEAN: I am not an authority on this matter, but, as I understand your present State Board of Conciliation and Arbitration, the two parties to the dispute have to seek their aid to have them come in, and that the great trouble is they have not sufficient power to really clean the matter up. The gentleman from Boston (Mr. Dennis D. Driscoll) said the other day that he would favor a proposition, as I remember it, to reorganize this Board of Conciliation and Arbitration and create a proper bureau to deal with this situation. Now let me say that when you get that bureau created what you need to make it effective is just this sort of amendment.

Mr. FLAHERTY of Boston: The plan of compulsory arbitration allures many, because apparently it holds out the hope of solving the difficulties that arise between labor and capital. The trouble with the proposition here is that it does not go far enough. It is our duty in this Convention not only to establish the principle but also to establish how that principle shall be invoked. The labor element is right in distrusting the proposal in the form in which it is presented here, because it simply hands over to the Legislature a power which, in the opinion of a great many respectable authorities, the Legislature now possesses, and up to the present time has not seen fit to put into operation. In view of the fact that we have taken what might be called the extreme view of the labor men and rejected it, and at the same time rejected this alluring proposition from a person who holds himself out as a friend of labor, we have followed a wise course, we ought not to take the proposition of compulsory arbitration and jam it down the throat of labor at this time and in this hall. I believe that many of us here who voted against the proposition of the gentleman from Barnstable (Mr. Bodfish) yesterday voted against it

because of the uncertainty of the manner in which it might be invoked. I would be prepared to vote now for a proposition of compulsory arbitration that carried with it a provision that a board or court created for that purpose should be elected by the people. Otherwise it presents too many dangers, dangers of creating unrest, and possibly something more, on the part of organized labor. It does not present any guarantee that organized labor shall be protected in what they regard as their proper rights.

It seems to me that the motion to reconsider should be defeated.

Mr. Bodfish of Barnstable: I want to say that I did not know that the motion to reconsider was going to be made. I had intended to take up this fight again under No. 284, for it seems to me that if there is any justification for minimum wages and shorter hours, there is a justification for some means of settling all disputes between capital and labor. I want to say that I was surprised at the delegate from Boston (Mr. Lomasney) directing his question to the gentleman from Wellesley (Mr. Pillsbury) as to the way in which the board that might adjust these differences would be selected. The way the amendment is drawn leaves it open entirely, and in the hands of the General Court. Though labor men fear the General Court it seems to me that that is no reason why we should not have some settlement of their difficulties. There is no reason why the General Court may not, if it finds it necessary or proper or expedient, provide for an elective system of selecting those who shall carry out the purposes of the amendment. The amendment is simply broad enough to allow the Legislature to deal with the question that may arise, and if they find one solution not sufficient they may try another. I have confidence in the General Court, especially with the initiative and referendum, which may be adopted, by which we may control or supervise or supplement their action. I have no fear of the General Court if the initiative and referendum fails. I think the General Court still will continue to treat us right, and it seems to me that this matter should be left to it. Suppose it should establish a tribunal like the Industrial Accident Board, with an appeal to the courts. Is there any fault to be found with that? It seems to me that this thing must be placed in the hands of the General Court, with full power to provide compulsory methods of settling the disputes between capital and labor.

The motion to reconsider was negatived.

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